



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for unpaid rent and for damage to the unit pursuant to section 67; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to a monetary order as compensation for loss or damage under the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The tenant's testimony is as follows. The tenancy began on April 1, 2015 and ended on February 28, 2022. The tenant was obligated to pay \$973.75.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$450.00 security deposit which the landlord still holds. The tenant testified that written condition inspection reports were not conducted at move in or move out. The tenant testified that he provided his forwarding address to the landlord by registered mail on March 7, 2022. The tenant testified that he did not give the landlord permission to withhold any of his deposit. The tenant is seeking the return of double his deposit $\$450 \times 2 = \900.00 .

The tenant is also seeking an overpayment of rent of \$387.94. The tenant testified that as part of a July 8, 2021 decision from the Branch, the tenant was entitled to a rent reduction of \$400.00 per month if the landlord did not conduct the repairs as ordered as part of that decision. In addition, the tenant was granted the ability to arrange to have the repairs done by a qualified repairman and to offset those costs with the rent reduction. The tenant advised that he received \$4016.25 in rent reductions but spent out of pocket, \$4404.19. The tenant seeks the recovery of the overpayment of \$387.94. The tenant also seeks the recovery of the \$100.00 filing fee for this application. The tenant disputes the landlord's submission that the matter was fully resolved on January 14, 2022. The tenant submits that the deposit was never part of the negotiations, and that the overpayment of rent is regarding a separate decision.

The landlord's agent made the following submissions on behalf of the landlord. EB submits that the tenant is seeking monies that he has already agreed to. EB submits that the January 14, 2022 application noted that the parties agreed to a full and final settlement and that the tenant has no legal basis to pursue this claim. EB submits that the tenants' application should be dismissed in its entirety and that both parties should "move on".

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Security Deposit

I address the issue of the security deposit as follows. The January 14, 2022 files that the parties came to a settlement on, does not include the issue of the security deposit. The Arbitrator noted the following:

4. The tenant agreed that this settlement agreement constitutes a final and binding resolution of his monetary claims in both applications, totalling \$467.76, **and agreed that he will not initiate any future claims or applications against the landlord, with respect to these issues;**

"These issues" refer to the following monetary claims made by the tenant and as noted by him on both applications as follows:

The tenant sought \$300.00 for the following:

"FRAUDULENT. LANDLORD HAS FAILED TO FOLLOW JULY 8/21 DECISION, NOR PAID THE MONETARY ORDER OF THE SAME DATE (FILE# 310031880). REASON FOR PREVIOUS DISPUTE IS LANDLORD FAILED TO MAINTAIN HOUSE, JEOPARDIZING MY HEALTH AND SAFETY. NO CONTRACTOR HAS COME TO MY HOUSE WHILE I HAVE BEEN AT HOME, NOR HAVE I BEEN GIVEN PROPER NOTICE. WORK NEEDED IS OUTSIDE, YET THIS CONTRACTOR DID NOT DO. LANDLORD WAS GIVEN A LIST OF NEEDED REPAIRS ALONG WITH ESTIMATE"

&

The tenant sought \$267.76 for the following:

"FOR WASTING TWO MORE AFTERNOONS OF MY TIME, GAS TO AND FROM SERVICES BC, INK, PHOTOCOPIES, REGISTERED MAIL, ETC. AMENDMENT SUBMITTED - #RTB-42T - \$267.76. MY MAIL WENT MISSING FROM THE SHARED MAILBOX THROUGHOUT APRIL, MAY AND JUNE, WHICH CAUSED ME TO HAVE THE POST OFFICE HOLD MY MAIL FOR PICK UP AT A COST OF AROUND FORTY-FIVE DOLLARS PER MONTH."

The above clearly shows that the issue of the security deposit and rental overpayment was not part of the settlement, nor was it filed for. As the security deposit was not part

of the January 14, 2022 applications I find that I am able to address the issue as follows. The \$1500.00 the landlord's agent continually referred to was for moving expenses only as noted by the Arbitrator. I made several attempts at explaining to the landlord and his agent that the tenants application was what I would be making a decision on, however; the agent continually referred to previous hearings and wished to argue findings made by other Arbitrators that were not before me as part of this application.

The tenant said he is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The landlord did not return the deposit to the tenant or file an application to retain it as noted above. Based on the above, I find that the landlord has not acted in accordance with Section 38 of the Act and that the tenant is entitled to the return of double his deposit in the amount of \$900.00.

Overpayment of Rent

As noted above, the January 14, 2022 applications do not address the issue of the overpayment of rent. The tenant has provided supporting and corroborating documentation to prove his claim. I find that the tenant is entitled to \$387.94.

The tenant is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The tenant has established a claim for \$1387.94. I grant the tenant an order under section 67 for the balance due of \$1387.94. This order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 23, 2023

Residential Tenancy Branch