



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- a monetary order pursuant to s. 67 for compensation or other money owed;
- an order pursuant to s. 38 for the return of the security deposit and/or the pet damage deposit; and
- return of the filing fee pursuant to s. 72.

T.L. appeared as the Tenant. D.S. appeared as agent for the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenant advised having served the Landlord with her application and evidence. The Landlord’s agent acknowledged receipt without objection. Based on the acknowledged receipt of the Landlord’s agent, I find that pursuant to s. 71(2) of the *Act* that the Landlord was sufficiently served with the Tenant’s application materials.

Preliminary Issue – Style of Cause

The Tenant has named a website as the Landlord in the application. Review of the evidence provided by the Tenant shows that a Four-Month Notice to End Tenancy was issued in which D.S. named himself as the Landlord.

I enquired with the parties who, in fact, was the Landlord. The agent advises that the residential property in question was purchased by the current landlord, with that sale

closing in the summer of 2021. The agent confirmed that the Landlord is G.L., who owns the property, and confirmed the spelling is the same as set out in a cheque in the Tenant's evidence. The agent further emphasized that he is not the Landlord and acts as an agent. The Tenant indicates that her tenancy agreement was signed with the previous owner and that she was not provided the name or contact information for the current Landlord, dealing directly with D.S.. She had believed D.S. to be the landlord.

Policy Guideline #43 provides guidance with respect to the naming of parties and specifies that the legal names of the relevant parties are to be used. In this instance, I note the Tenant did not have a tenancy agreement upon which to verify the spelling for the Landlord's name given it was sold during the tenancy.

Based on the evidence provided to me by the parties, I amend the style of cause to list G.L. as the Landlord. I accept the agent's testimony that he is not the owner and is not the landlord, rather acting on behalf of G.L..

Issues to be Decided

- 1) Is the Tenant entitled to monetary compensation?
- 2) Is the Tenant entitled to the return of her security deposit?
- 3) Is the Tenant entitled to the return of her filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following aspects with respect to the tenancy:

- The Tenant moved into the rental unit on February 26, 2021.
- The Tenant vacated the rental unit on March 11, 2022.
- Rent of \$1,600.00 was due on the first day of each month.
- A security deposit of \$800.00 was paid by the Tenant.

The Tenant testified that she was served with a Four-Month Notice to End Tenancy for demolition of the rental unit, a copy of which was provided to me by the Tenant, which was signed on January 27, 2022 and sets its effective date as May 31, 2022.

The Tenant's evidence also includes an addendum signed by the Tenant and the agent, which states the following:

This addendum forms as part of the mutual agreement to end a tenancy.

The landlord agrees to pay \$3,200.00 to the tenants in [rental unit address] in lieu of terminating the month-to-month lease at the above location. The landlord also agrees not to charge the tenant the last month rent. The tenant agrees to move out by April 30, 2022, the latest. The tenant reserves the right to move out earlier than April 30, 2022.

I am told by the Tenant that the addendum was signed sometime in February 2022. The agent says the agreement to end the tenancy was at the Tenant's initiative.

According to the Tenant, she provided notice to the Landlord on February 28, 2022 that she would be leaving the rental unit within 10 days. A copy of the email dated February 28, 2022 from the Tenant in which she gave notice to the Landlord's agent was provided to me by the Tenant.

The Tenant testified that she received no substantive response from the Landlord's agent after giving notice on February 28, 2022. The Tenant says that no move-out inspection was conducted and that she cannot recall leaving the keys behind as she received no response with respect to moving out. The Tenant's evidence includes an email dated March 8, 2022 to the Landlord's agent asking to contact her to make arrangements for a move-out inspection.

The Tenant says that she provided the Landlord with her forwarding address on March 12, 2022. I am provided with a copy of an email of the same date by the Tenant as proof of the forwarding address having been provided to the Landlord's agent. The same email chain includes a response from D.S. which states: "Are you all moved out? If you are all moved out, I can send back your deposit of 800".

The Tenant advises that she seeks compensation for March's rent and argued that this is owed to her pursuant to the addendum ending the tenancy. The Tenant prorates this claim to March 15, 2022, such that she says she's owed \$825.85 from the Landlord for the partial month's rent for March. When I enquired whether the Tenant had, in fact, paid rent for March 2022, the Tenant did not provide a definitive response. The Tenant's

evidence does not include record that she paid rent on March 1, 2022. The Landlord's agent says that the Tenant did not pay rent for March.

The Tenant also seeks the return of her security deposit, though the parties confirmed that the Landlord issued a return of \$800.00 to the Tenant. The Tenant's evidence includes a cheque dated April 10, 2022 from G.L.. The Landlord's agent confirms this was delivered to the Tenant sometime around April 10, 2022, though he emphasized the Tenant did not deposit it until May 2, 2022. The Tenant confirms depositing the cheque in early May, though says she received the cheque from the Landlord in her mailbox on April 19, 2022.

The Tenant confirms having conducted a move-in inspection with the previous Landlord's property manager.

Analysis

The Tenant seeks monetary compensation and the return of her security deposit.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Looking first at the Tenant's claim for compensation, the Tenant is entitled to a month's rent, either pursuant to the signed addendum or pursuant to s. 51(1) of the *Act*. However, the Tenant was unclear on whether she paid rent for March 2022. The Landlord's agent was clear in his testimony that rent had not been paid. Further, the Tenant did not provide proof that rent had been paid. I find that it is more likely than not that rent for March 2022 had not been paid.

The Tenant did receive her compensation by not paying rent for March 2022. To be clear, rent is to be paid in full when it is due as per s. 26(1) of the *Act*. The fact that the Tenant vacated before March 31, 2022 is irrelevant as her obligation to pay rent came due on the 1st. The Tenant did not pay rent such that she has already received her compensation. I find that the Tenant is not entitled to monetary compensation. This portion of her application is dismissed.

The Tenant also seeks return of her security deposit. Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. A landlord may not claim against the security deposit if the application is made outside of the 15-day window established by s. 38(1) of the *Act*. Under s. 38(6) of the *Act*, when a landlord fails to either repay or claim against the security deposit within the 15-day window, the landlord may not claim against the security deposit and must pay the tenant double their deposit.

In the present instance, I find that the tenancy ended on March 11, 2022 and the Tenant provided her forwarding address on March 12, 2022, as demonstrated in the Tenant's evidence. Accordingly, the Landlord had 15-days from March 12, 2022 to either return the security deposit or file an application claiming against it. In this instance, the Landlord did return the security deposit, though the Landlord's agent admits this was served sometime around April 10, 2022, which is when the Landlord signed the cheque to the Tenant for the deposit. I find that the Landlord failed to return the security deposit within the 15-day window imposed by s. 38(1) of the *Act*.

Accordingly, the Tenant is entitled to double the security deposit as per s. 38(6) of the *Act* in the amount of \$1,600.00 (\$800.00 x 2). As the Tenant deposited the cheque of \$800.00, this is reduced to \$800.00 (\$1,600.00 - \$800.00).

I have turned my mind to the question of extinguishment, specifically whether the Tenant's right to the security deposit was extinguished. I accept the Tenant's testimony that there was a move-in inspection and that she did participate, such that I am satisfied that s. 24(1) of the *Act* has not been triggered. Accordingly, the Tenant's right the security deposit was not extinguished.

Conclusion

The Tenant's claim for monetary compensation under s. 67 of the *Act* is dismissed without leave to reapply.

The Tenant is entitled to double the return of the security deposit pursuant to s. 38(6) of the *Act*. As \$800.00 has already been returned, the monetary order for this claim is \$800.00 (\$1,600.00 - \$800.00).

I find that the Tenant was partially successful in her application, with the larger portion of the monetary claim being dismissed. Given the mixed success, I find that the Tenant is not entitled to the return of her filing fee. Her claim under s. 72 of the *Act* is dismissed without leave to reapply.

I grant the Tenant a monetary award in the amount of \$800.00. It is the Tenant's obligation to serve the monetary order on the Landlord. If the Landlord does not comply with the monetary order, it may be filed by the Tenant with the Small Claims Division of the Provincial 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 05, 2023

Residential Tenancy Branch