



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing dealt with the tenant's application, filed on November 8, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of the security deposit of \$1,400.00, pursuant to section 38; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The landlord, the tenant, and the tenant's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing lasted approximately 42 minutes from 1:30 p.m. to 2:12 p.m.

All hearing participants confirmed their names and spelling. The landlord and the tenant provided email addresses for me to send copies of this decision to both parties after the hearing.

The landlord confirmed that she owns the rental unit. She provided the rental unit address.

The tenant identified himself as the primary speaker for the tenant at this hearing. He said that his agent had permission to speak on his behalf at this hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recordings of any RTB hearings by any participants. At the outset of this

hearing, all hearing participants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. I informed them that I could not provide legal advice to them. They had an opportunity to ask questions, which I answered. They did not make any adjournment or accommodation requests.

Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision. Both parties were given multiple opportunities to settle this application during this hearing, and declined to do so.

I repeatedly cautioned the tenant and his agent that if I dismissed the tenant's application without leave to reapply, the tenant would receive \$0. The tenant and his agent repeatedly affirmed that they were prepared for the above consequences if that was my decision.

I repeatedly cautioned the landlord that if I granted the tenant's entire application, and awarded the tenant double the amount of his security deposit of \$1,400.00, the landlord would be required to pay the tenant \$2,900.00, including the \$100.00 filing fee. The landlord repeatedly affirmed that she was prepared for the above consequences if that was my decision.

Preliminary Issue – Previous RTB Hearing and Service of Documents

The tenant's application was originally scheduled as a direct request proceeding, which is a non-participatory hearing and ex-parte application. The direct request proceeding is based on the tenant's paper application only, not any submissions from the landlord.

An "interim decision," dated January 5, 2023, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing for the following reason at page 3:

I have reviewed all documentary evidence and I find the tenant named on the tenancy agreement (Person D.S.) does not match either tenant named on the Application for Dispute Resolution (Person L.S. and Person R.C.). I also find there is no documentation or evidence demonstrating that the applicants are entitled to have orders issued in their names.

I find this discrepancy raises a question that can only be addressed in a participatory hearing.

At this hearing, the tenant affirmed that he used his middle name and surname (D.S.) in the parties' written tenancy agreement, rather than his legal first name and surname (L.S.), which he used in this application. I find that the tenant is the same person named on the parties' written tenancy agreement and this application. The landlord agreed with same during this hearing.

The tenant agreed that L.S. is his agent and was not named on the parties' written tenancy agreement and did not pay a security deposit to the landlord, but she was named as a tenant-applicant party in this application.

The tenant was required to serve the landlord with a copy of the interim decision and the notice of reconvened hearing, dated January 6, 2023. The landlord confirmed receipt of the above documents. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the above documents.

The landlord confirmed receipt of the tenant's original application for direct request and evidence, except for the below documents. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's original application and evidence, except for the below documents.

I provided the tenant's agent with ample and additional time during this hearing, in order to find the tenant's evidence package, which she claimed was "moved" and she had to log into an online account, in order to find it.

The landlord stated that she did not receive some of the tenant's evidence, including a proof of service document of "notice package," proof of service document of tenant's forwarding address, and direct request worksheet with the amount that the tenant is seeking in this application. The tenant's agent said that she served the above documents to the landlord in person at her law office, except for the proof of service of document of notice package, which was sent by email to the landlord.

I do not find it necessary to make findings regarding service of the tenant's above documents to the landlord. I was not required to consider the above documents at this hearing or in this decision. The landlord admitted service of the tenant's application,

including the amount that the tenant is seeking, the evidence as noted above, and the tenant's forwarding address.

The tenant confirmed receipt of the landlord's evidence. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's evidence.

Preliminary Issue – Amendments to Tenant's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to add the tenant's middle name to the style of cause, remove the tenant's agent as a tenant-applicant party, and to correct the rental unit address to add "drive" as the street identifier (as noted on the parties' written tenancy agreement).

The tenant and his agent consented to the amendment to remove the tenant's agent as a tenant-applicant party and the landlord did not object to same. The tenant and his agent both agreed that the tenant's agent was not a named tenant in the parties' written tenancy agreement, nor did she pay the security deposit to the landlord.

I find no prejudice to either party in making the above amendments.

Issues to be Decided

Is the tenant entitled to recover double the amount of his security deposit?

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 13, 2021. Monthly rent of \$2,800.00 was payable on the first day of each month. A security deposit of \$1,400.00 was paid by the tenant and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy. Neither party signed the move-out condition inspection report at the signature lines of sections 3 and

4 of page 3, but the tenant's agent signed in the signature line of section 2 at page 3. The landlord received a written forwarding address from the tenant's agent on October 16, 2022, by way of the move-out condition inspection report. The landlord did not file an RTB application to keep any amount from the tenant's security deposit. The move-out condition inspection report indicates that the tenant's agent agreed to the following at section 2 of page 3: "2/3 of utilities, + owl add back → paint chips over \$200." The move-out condition inspection report does not state any specific amount that the landlord can retain from the tenant's security deposit. The landlord sent an email, dated November 23, 2022, to the tenant, asking to return \$654.52 from the tenant's security deposit to the tenant, and the tenant did not agree to same.

The landlord testified regarding the following facts. She had written permission from the tenant to retain money from his security deposit for the damages noted in the move-out condition inspection report. Even though there was no specific amount in the move-out condition inspection report, and the landlord did not sign it, she asked to return \$654.52 from the tenant's security deposit of to the tenant, as per her email, dated November 23, 2022, to pay for painting and utilities. The landlord calculated the amount of \$745.48 to retain from the tenant's security deposit, during this hearing. The landlord did not notice that she did not sign the move-out condition inspection report until this hearing.

The tenant's agent testified regarding the following facts. She attended the move-out condition inspection, not the tenant. She did not agree to the landlord's painting charges in the move-out condition inspection report. The landlord did not provide any amounts for the utilities or other costs until one month after the move-out condition inspection. The landlord waited a long time, did not return the tenant's deposit, and the money is important for the tenant.

The tenant testified regarding the following facts. The tenant's agent attended the move-out condition inspection, not the tenant. The tenant does not agree with the painting charges from the landlord, as he is entitled to nail holes in the walls to hang pictures at the rental unit and it is considered reasonable wear and tear.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit.

However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings on a balance of probabilities, based on the testimony and evidence of both parties.

The following facts are undisputed. The tenant paid a security deposit of \$1,400.00 to the landlord, which the landlord continues to retain in full. This tenancy ended on October 15, 2022. The landlord received a written forwarding address from the tenant on October 16, 2022, by way of the move-out condition inspection report. The landlord did not file an application at the RTB to keep any amount from the tenant's security deposit.

The landlord did not return the tenant's security deposit at all, whether within 15 days of the end of the tenancy on October 15, 2022, or receipt of the tenant's written forwarding address date of October 16, 2022.

The landlord referenced and read aloud the following section 38(4)(a) of the *Act*, during this hearing (emphasis in original):

Return of security deposit and pet damage deposit

38 (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or...

I find that neither the tenant, nor his agent, provided written permission for the landlord to retain any amount from the tenant's security deposit. Both parties agreed during this hearing, that there is no specific amount provided in the move-out condition inspection report. The above section 38(4) of the *Act* refers to an "amount," which I find to be a specific number, not a vague or ambiguous reference to a possible number or a number to be calculated in the future. I do not find "2/3 of utilities, + owl add back → paint chips over \$200" to indicate any specific amount. While the paint refers to "over \$200," this is still not a specific amount.

I also note that neither party signed the move-out condition inspection report, in the appropriate signature lines of sections 3 and 4 of page 3. While the tenant's agent signed at section 2 or page 3 of the move-out condition inspection report, I find that there was no specific amount of deduction to agree to, from the security deposit.

While the landlord provided a specific amount to return to the tenant, of \$654.51 from the security deposit, by email on November 23, 2022, over 1 month after the move-out condition inspection report was completed on October 16, 2022, neither the tenant, nor his agent, agreed to same. The landlord did not even indicate the "amount" to "retain," as per the above wording of section 38(4) of the *Act*, of \$745.48 in the above email of November 23, 2022, sent to the tenant, since the landlord had to calculate same during this hearing.

In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to receive double the amount of his security deposit of \$1,400.00, totalling \$2,800.00, from the landlord.

Interest is payable on the tenant's security deposit of \$1,400.00, during the period of this tenancy. No interest is payable for the years from 2021 to 2022. Interest of 1.95% is payable for the year 2023.

Interest is payable from January 1 to February 21, 2023, since the date of this hearing and decision is February 21, 2023. This results in \$3.89 interest on \$1,400.00 for 14.25% of the year based on the RTB online deposit interest calculator. Interest is calculated based on the original amount of the security deposit of \$1,400.00, and is not doubled, as per Residential Tenancy Policy Guideline 17.

I find that the tenant is entitled to receive double the value of his security deposit of \$1,400.00, totalling 2,800.00, plus \$3.89 in interest.

As per section 38 of the *Act* and Residential Tenancy Policy Guideline 17, I am required to consider the doubling provision, even though the tenant did not apply for it in this application, since the tenant did not specifically waive his right to it, as he affirmed during this hearing. I informed both parties of same during this hearing and they affirmed their understanding of same.

As the tenant was successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$2,903.89 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in 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: February 21, 2023

Residential Tenancy Branch