



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing. No issues were raised with respect to the service of the application and evidence submissions on file.

The tenant confirmed she has vacated the rental unit ; therefore, her application pertaining to providing services and facilities and for the landlord to comply with the Act are moot.

Issues

Is the tenant entitled to monetary compensation?

Is the tenant entitled to a return of all or a portion of the security deposit, including double the amount?

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

Background and Evidence

The tenancy for this basement unit began on August 1, 2021 and ended on November 5, 2022. The tenant paid a security deposit of \$375.00 and a key deposit of \$20.00 at the start of the tenancy which the landlord continues to hold.

The tenant is seeking a return of the security and key deposit. The tenant provided a copy of a text message sent to the landlord dated November 6, 2022 as proof of service of a forwarding address. The tenant submits that the landlord acknowledged receipt of the text message.

The landlord argues acknowledged receipt of the forwarding address by text message on November 6, 2022.

The tenant is also claiming the equivalent of one month's rent as compensation for not receiving a legal notice to end tenancy from the landlord. The tenant states the landlord sent her a text message stating she needed the rental unit for her son.

Analysis

Section 38(1) of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. As per section 38(6), a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

Section 88 of the Act sets out how documents may be served. Text message is not an acceptable method of service pursuant to section 88 of the Act. However, section 71(2)(c) of the Act provides the Director the authority to order that a document is sufficiently given or served for the purposes of the Act, in cases where it has not been served in strict accordance with section 88 or 89 of the Act. I accept the tenant's evidence and find the landlord was sufficiently served with a forwarding address by text message on November 6, 2022 and the landlord confirmed receipt.

I find the tenant provided a forwarding address in writing to the landlord. The tenant's security deposit was not refunded within fifteen days of the end of the tenancy or the date a forwarding address was provided as required by section 38 of the Act. The landlord did not have written authorization to retain the security deposit or file an application to claim against the deposit within fifteen days; therefore, the doubling provisions of section 38 apply.

I allow the tenant's claim for return of the security and key deposit and award an amount of \$770.00, which is double the original security deposit of \$375.00 plus the \$20.00 key deposit.

Section 51(1) of the Act states that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

I find that the notice to vacate by text message from the landlord is not a formal notice to end tenancy under section 49 of the Act. The tenant was under no legal obligation to vacate the rental unit. The tenant's application for one month compensation is therefore dismissed without leave to reapply.

As the tenant was partly successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of \$870.00.

Conclusion

I grant the tenant a Monetary Order in the amount of \$870.00. 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: July 17, 2023

Residential Tenancy Branch