



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, MNSD

Introduction

On February 7, 2023, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking a return of double the security deposit pursuant to Section 38 of the *Act*.

The Tenant attended the hearing, with S.S. attending as a translator for the Tenant, and with A.A. attending later as a witness. The Landlord attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could 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. As well, all parties in attendance provided a solemn affirmation.

S.S. advised that the Notice of Hearing package was served to the Landlord by registered mail on February 18, 2023, and the Landlord confirmed that this package was received. As such, I am satisfied that the Landlord has been duly served this Notice of Hearing package.

S.S. then advised that the Tenant’s evidence was placed on a USB and served to the Landlord by registered mail on May 19, 2023. The Landlord confirmed that he received

this evidence and that he was able to view the contents of the USB. As such, I have accepted this evidence and will consider it when rendering this Decision.

The Landlord advised that he served his evidence to the Tenant by regular mail on June 11, 2023; however, he did not have any proof of this service. S.S. testified that the Tenant did not receive any mail from the Landlord. Given that the Landlord did not have any proof of service of having sent this evidence to the Tenant, I am not satisfied that it was served on the Tenant. As such, I have excluded this evidence and will not consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a return of double the security deposit?
- Is the Tenant entitled to a Monetary Order for compensation?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on September 1, 2021, and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on or around December 31, 2022. Rent was established at an amount of \$1,450.00 per month and was due on the first day of each month. A security deposit of \$725.00 was also paid. A copy of the signed tenancy agreement was not submitted by either party for consideration.

All parties agreed that the Tenant provided her forwarding address on December 1, 2022.

Given that the Tenant indicated on her Application that she was seeking the return of her security deposit and then compensation in the amount of \$1,400.00 for a doubling of the deposit, it was not clear exactly what the Tenant was seeking. S.S. acknowledged that this was a mistake and that the Tenant was simply seeking a monetary award in the amount of **\$1,450.00**, or double the security deposit because the Landlord did not comply with the *Act*.

The Landlord advised that he arranged to meet with the Tenant on January 15, 2023, at the dispute address and that he handed a cheque in the amount of \$725.00 to the Tenant. He stated that he had a witness with him on that day; however, when he was provided an opportunity for this witness to testify at the hearing, this witness was not available as he was driving and unable to pull over to testify safely. Moreover, there was no documentary evidence submitted by the Landlord to corroborate this exchange of the security deposit. It should be noted that the Landlord had ample opportunity to plan to have his witness available for the hearing or to submit documentary evidence to substantiate his testimony.

S.S. advised that the Tenant sent the Landlord a text message on January 14, 2023, asking for the security deposit back, and the Landlord did not respond. She testified that the Tenant never met the Landlord on January 15, 2023, and that the Landlord called a ministry employee on January 24, 2023, and stated that he would not be returning the security deposit to the Tenant. She submitted that there were two separate Dispute Resolution proceedings on February 9 and 10, 2023, between the parties, and that the Landlord testified in one of these hearings that he was still holding the Tenant's security deposit (the relevant file numbers are noted on the first page of this Decision). She stated that the Arbitrator informed him that he should be prepared to pay double the security deposit as he had not complied with the *Act*. She then stated that the Tenant only received the Landlord's cheque for the security deposit back in a registered letter dated February 13, 2023. She referenced the documentary evidence submitted to support this position.

The Landlord confirmed that he attended two, different Dispute Resolution proceedings on February 9 and 10, 2023, and he advised that the Arbitrator in one of the hearings informed him about the requirements of Section 38 of the *Act*.

A.A. then joined the hearing and provided solemnly affirmed testimony that she attended two, different Dispute Resolution proceedings on February 9 and 10, 2023, as a translator for the Tenant. She testified that the Landlord's direct, solemnly affirmed

testimony in one of those hearings was that he was “not going to pay the deposit back because the Tenant did lots of damage” and that he was “not going to give [the deposit] to her.” She stated that the Arbitrator informed the Landlord of the consequences of not dealing with the deposit in accordance with the *Act* and warned him that he would be responsible for paying double the security deposit to the Tenant. She then testified that the Landlord stated that he would then apply to claim against the security deposit.

The Landlord did not have any questions for A.A. However, he refuted that he ever made these comments. He claimed that the Tenant needed the security deposit to take care of her children, so this was the reason he returned the deposit. As well, he stated that he did not file a claim against the Tenant yet for the alleged extensive damage to the rental unit because he did not “want to bother the Tenant.”

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant’s forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may turn to a determination of credibility. I have considered the parties’ testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the consistent and undisputed evidence before me, I am satisfied that the Landlord received the Tenant’s forwarding address in writing on December 1, 2022,

and that the tenancy ended on December 31, 2022, based on the Tenant's written notice to end her tenancy. I find it important to note that Section 38 of the *Act* clearly outlines that from the latter point of a forwarding address being provided or from when the tenancy ends, the Landlord must either return the deposit in full **or** make an Application to claim against the deposit. There is no provision in the *Act* which allows the Landlord to retain a portion of the deposit without the Tenant's written consent.

While the Landlord claimed to have met the Tenant on January 15, 2023, and handed her a cheque for the security deposit, I note that he has not submitted any documentary evidence to substantiate this testimony.

On the other hand, I have documentary evidence of the Tenant requesting by text on January 14, 2023, that the Landlord return the security deposit. Had the Landlord truly coordinated with the Tenant to meet at the dispute address the next day to return the security deposit, I find it reasonable to conclude that there would be some evidence of the Landlord communicating this plan with the Tenant in some manner, whether it be by text or some other fashion. However, there is no such documentary evidence submitted by the Landlord, nor was there any testimony from him indicating how this alleged meeting was organized. This causes me to be doubtful of the legitimacy of the Landlord's testimony.

Moreover, I have testimony from the Tenant, S.S., and A.A., who all confirmed that the Landlord testified in a previous Dispute Resolution proceeding, on either February 9 or 10, 2023, that he was still holding the security in trust, that he did not return it yet due to damage that the Tenant caused, and that the Arbitrator cautioned him of the consequences of not complying with Section 38 of the *Act*. Furthermore, I have documentary evidence before me from the Tenant of a registered mail envelope dated February 13, 2023, from the Landlord with a copy of the cheque for the security deposit enclosed.

Considered in its totality, I do not find the Landlord to a credible witness as his testimony was inconsistent and dubious. I accept the more consistent testimony and documentary evidence from the Tenant's side that there was a previous Dispute Resolution proceeding in February 2023 where the Landlord acknowledged that he was still holding the Tenant's security deposit because of damage he believed the Tenant did to the rental unit. I find that the registered mail envelope from the Landlord dated February 13, 2023, would be consistent with him attempting to return the deposit after being informed of him breaching the *Act* by an Arbitrator in the previous hearing on

either February 9 or 10, 2023. Moreover, I find that the cheque dated January 5, 2023, was an attempt by the Landlord to appear as if he had complied with the *Act*, and this only further supports a conclusion that he was continuing to provide fraudulent testimony during the hearing, despite being afforded every attempt to be honest.

Finally, I find it illogical and inconsistent with common sense and ordinary human experience that the Landlord would have returned the deposit in full to the Tenant on January 15, 2023, when he claimed that the Tenant had been negligent for extensive damage to the rental unit. While he alleged that he did so to benefit the Tenant and her children, this makes little sense because if he were to apply against the Tenant for compensation for the alleged damages and was successful, he would have likely been awarded this amount in any event. I find that this testimony was likely a further attempt to advance a false narrative that did not exist.

Based on the entirety of the evidence before me, I am satisfied that the Landlord's testimony was not credible or reliable, and that he was being wholly untruthful. Consequently, I am satisfied that as the Landlord did not return the deposit in full or make an Application to keep it within 15 days of December 31, 2022, I find that the Landlord did not comply with the requirements of Section 38 and illegally withheld the security deposit contrary to the *Act*. Therefore, I am satisfied that the doubling provisions of this Section do apply in this instance. Under these provisions, I grant the Tenant a monetary award in the amount of **\$1,450.00**.

As an aside, the Landlord is cautioned that the Compliance and Enforcement Unit of the Residential Tenancy Branch is responsible for administrative penalties that may be levied under the *Act*. This unit has the sole authority to determine whether to proceed with a further investigation into repeated matters of contraventions of the *Act*, and the sole authority to determine whether administrative penalties are warranted in certain circumstances. The Landlord is warned that he could be subject to investigation and penalty should there continue to be future and repeated instances of behaving in a fraudulent manner.

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$1,450.00** in the above terms, and 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: July 17, 2023

Residential Tenancy Branch