



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

For the Landlord: MNDCL-S, FFL

For the Tenant: MNSD, FFT

Introduction

The Landlord filed an Application for Dispute Resolution on October 31, 2022 seeking compensation for damage by the Tenant in the rental unit. They also made a request for an order granting recovery of the fee for filing the Application in this matter. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 3, 2023.

The Tenant (as Respondent to the Landlord’s Application) attended the hearing. They provided that the Landlord notified them of this hearing via registered mail.

The Landlord did not attend the hearing, although I left the teleconference hearing connection open until 1:56pm to enable the Landlord to call in to this teleconference hearing scheduled for 1:30pm. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed throughout the duration of the call that the Landlord was not in attendance.

The Tenant advised they filed their own separate Application on November 16, 2022. They advised the Landlord of their Application via registered mail on November 27, 2022, and provided that receipt as evidence. As per s. 90(a) of the *Act*, I deem the Landlord served via registered mail on December 2, 2022. The Tenant applied for the return of the security deposit, plus reimbursement of the Application filing fee.

The Landlord's Application

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss that party's application without leave to reapply.

As the Landlord did not attend to present their Application, I dismiss the Landlord's Application in its entirety, without leave to reapply.

Issue(s) to be Decided

Is the Tenant entitled to an Order granting a refund of the security deposit, pursuant to s. 38 of the *Act*?

Is the Tenant entitled to recovery of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant provided documentary evidence and oral testimony during the hearing. The relevant portions are as follows:

- They paid rent of \$5,000 per month at the time the tenancy ended on October 1, 2022. This was reduced from the starting rent of \$5,350, the original amount of rent in place, by agreement.
- The tenancy originally started on June 1, 2018, as the Tenant provided on their Application to the Residential Tenancy Branch.
- The Tenant paid a security deposit of \$2,675. This is shown in the copy of the agreement the Tenant provided as evidence from 2021.
- The Landlord served the Tenant a Two-Month Notice to End Tenancy for Landlord's Use of Property. The Tenant agreed with the Landlord to move out on October 1, 2022.
- The Landlord and Tenant completed a "cursory" inspection of the rental unit together on October 1, 2022. The Landlord stated they would return the full deposit to the Tenant during that meeting.
- On October 4, 2022 via email the Landlord confirmed they would be returning that deposit money to the Tenant.

- On October 17 the Landlord notified the Tenant that they would not be returning the deposit to the Tenant, this because of damage to the flooring in the rental unit.
- The Tenant provided a forwarding address to the Landlord via the specific form for this purpose, dated October 17, 2022. They served this to the Landlord via registered mail on October 18, 2022.

Analysis

The *Act* s. 38(1) provides that a landlord must either: repay a security and/or pet deposit; or apply for dispute resolution to make a claim against those deposits. This must occur within 15 days after the later of the end of tenancy or a tenant giving their forwarding address.

Following this, s. 38(4) provides that a landlord may retain a security deposit or pet deposit if the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. This subsection specifies this written agreement must occur at the end of a tenancy.

Then, s. 38(6) sets out the consequences where the landlord does not comply with the requirements of s. 38(1). These are: the landlord may not make a claim against either deposit; and, the landlord must pay double the amount of either deposit, or both.

I find as fact, based on their undisputed evidence and testimony, the Tenant gave their forwarding address to the Landlord as provided for in their evidence: they gave this to the Landlord on October 17, 2022. A copy of that form, showing the Tenant sent it on October 18, is in the evidence.

The Landlord applied for dispute resolution within 15 days of receiving the Tenant's forwarding address, on October 31. I find the Landlord did apply for dispute resolution to claim against the security deposit within 15 days of receiving the Tenant's forwarding address. The Landlord did not breach s. 38 of the *Act*.

Because the Landlord was not successful on their claim, they must repay the security deposit amount to the Tenant in full. There is no provision for double of that amount in this situation. To ensure the Landlord's compliance, I grant the Tenant a monetary order for the full amount of the security deposit in total; this is \$2,675.

Though the Tenant specified the amounts they spent for registered mail in giving their forwarding address and notification of this present Application to the Landlord, the *Act* does not provide for compensation of these amounts.

The *Act* s. 72 grants me the authority to order the repayment of a fee for the Application. As the Tenant was successful in their claim, I find they are entitled to recover the filing fee from the Landlord.

Conclusion

I order the Landlord to pay the Tenant the amount of \$2,775. I grant the Tenant a Monetary Order for this amount. The Tenant must serve this Monetary Order on the Landlord. Should the Landlord fail to comply with this Monetary Order, the Tenant may file it in the Provincial Court (Small Claims) where it will be 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 s. 9.1(1) of the *Act*.

Dated: August 3, 2023

Residential Tenancy Branch