



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes

Tenant: MNSD FF

Landlord: MNDC MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

The Landlord was represented at the hearing an agent. The agent stated that the Landlord was undergoing a medical test, so couldn't be present, but she was willing to proceed. She also never asked for an adjournment. The Tenant was also present with counsel and a witness. All parties acknowledged receipt of the each other's application packages, and evidence. Neither party took issue with the service of the documents. I find both parties sufficiently served each other with their application, Notice of Hearing and evidence.

All parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Tenant

- Is the Tenant entitled to the return of double the security deposit held by the Landlord?

Landlord

- Is the Landlord entitled to compensation for money owed or damage or loss under the Act?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in my decision set out below, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agree that the tenancy started on October 15, 2023, and ended on November 20, 2023.

Both parties also agree that monthly rent was set at \$2,500.00 and that the Landlord still holds a security deposit in the amount of \$1,250.00.

Tenant's Application

The Tenant is seeking the return of her security deposit.

The Tenant stated that she provided her forwarding address multiple times to the Landlord. She provided registered mail tracking information showing she sent the November 30, 2023 letter on December 2, 2023. The Landlord stated they never received any forwarding address from the Tenant until this dispute resolution proceeding.

The Landlord filed an application against the deposit on October 11, 2024.

Landlord's Application

In the Landlord's application, they indicated they are seeking \$7,500.00 which is the 3 months worth of rent the unit sat vacant before they could find a new set of tenants. The Landlord provided a copy of the new tenancy agreement, showing they re-rented to unit on or around March 15, 2024, and the unit was empty for at least 3 months. The Landlord asserts this was a fixed term lease of 1 year, and pointed to the tenancy agreement in evidence.

The Tenant stated that the Landlord provided no evidence that they mitigated any rental loss, to try to re-rent sooner. The Tenant also asserts that the Landlord fraudulently modified the tenancy agreement (page 2) to list this as a fixed term lease, rather than a month-to-month. The Tenant brought a witness to the hearing, who affirmed that she was present, at the time the tenancy agreement was signed, and that it was in fact month-to-month. The Tenant stated that she tried to get a copy of the tenancy agreement at the start of the tenancy, but the Landlord never gave her one, until she filed this application.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Each application will be addressed separately. For each application, the burden of proof is on the person who made that application to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the other party. The Applicant must also provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the applicant did everything possible to minimize the damage or losses that were incurred.

Tenants' Application

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, both parties confirmed that the Tenant moved out of the rental unit on November 20, 2023, which I find reflects the end of the tenancy. Although the Landlord denies getting the Tenant's forwarding address in writing, I note the Tenant provided mail tracking to prove what she sent, and when. Pursuant to section 88 and 90 of the Act, I find the Landlord is deemed served with the Tenant's forwarding address in writing on December 7, 2023, the fifth day after its registered mailing.

I note the Tenant did not authorize any deductions from the security deposit and there is no evidence to show that either party extinguished their right to the security deposit.

Pursuant to section 38(1) of the Act, the Landlord had 15 days from receipt of the forwarding address in writing (until December 22, 2023) to either repay the security deposit (in full) to the Tenant or make a claim against it by filing an application for dispute resolution. The Landlord did neither and I find the Landlord breached section 38(1) of the Act.

Accordingly, as per section 38(6)(b) of the Act, I find the Tenant is entitled to recover double the amount of the security deposit (\$1,250.00 x 2). Further, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenant paid to make the application for dispute resolution.

In summary, I issued the Tenant a monetary order for \$2,600.00 based on the Landlord's failure to deal with the security deposit in accordance with section 38 of the Act.

Landlord's Application

I have reviewed the evidence and testimony on this matter. I note the parties do not agree with respect to whether or not the tenancy agreement was fixed term, or month-to-month. The Tenant asserts the agreement was doctored. Regardless of whether it was fixed term or month-to-month, I find the Landlord has failed to provide sufficient evidence or testimony to explain how their rental loss was mitigated. They assert the unit was empty for 3 months, at least, but I have no documentary evidence, nor any clear explanation, showing when the ad was re-posted, and what steps the Landlord took to mitigate any alleged rental loss by trying to find a replacement tenant sooner. I find the Landlord has failed to satisfy part 4 of the 4-part test above. I hereby dismiss the Landlord's application, in full, without leave.

Conclusion

The Tenant is granted a monetary order pursuant to Section 67 in the amount of \$2,600.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 28, 2024

Residential Tenancy Branch