



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VILLA EVE APARTMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDCT

Introduction

On April 9, 2019, the Tenant applied for a Dispute Resolution proceeding seeking a return of the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “Act”).

On April 10, 2019, the Tenant amended his Application to request a Monetary Order for compensation pursuant to Section 67 of the *Act*.

The Tenant attended the hearing with A.A. and D.B. attending as advocates for the Tenant. T.P. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing and evidence package to the Landlord by hand on April 9, 2019 and the Amendment by registered mail on April 10, 2019. T.P. confirmed that she received these documents, but she received them in the mail in April 2019. Based on this testimony, I am satisfied that the Landlord was served the Notice of Hearing package, the Amendment, and the Tenant’s evidence.

T.P. advised that the Landlord’s evidence was served to the Tenant by registered mail on July 8, 2019 (the registered mail tracking number is on the first page of this decision). A.A. stated that the Tenant did not receive this evidence; however, the registered mail tracking history indicates that the Tenant signed to receive this package. While the Tenant’s testimony is contradictory, I am satisfied from the tracking history that the Tenant was served the Landlord’s evidence. As such, I have accepted this evidence, and I will 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 and written 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 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 May 1, 2018 for a fixed-term ending on April 30, 2019. The Tenant vacated the rental unit on March 31, 2019 based on his written notice to do so. Rent was established at \$1,245.00 per month, due on the first of each month. A security deposit of \$597.50 was paid. The tenancy agreement indicated that there was a liquidated damages clause of \$300.00.

All parties agreed that the Tenant signed the move-out inspection report agreeing that the liquidated damages clause of \$300.00 would be deducted from the security deposit.

A.A. and D.B. advised that the Tenant was seeking compensation in the amount of **\$300.00** because the Tenant did not understand the liquidated damages clause in the tenancy agreement, due to a language barrier. It is their belief that he should not owe this as he did not understand what he was signing, and they cited hardship issues as well. Had he been able to understand this, he would have never signed agreeing to this deduction.

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(4)(a) of the *Act* states that the Landlord may retain an amount from the security deposit if the Tenant agrees in writing to that amount. While it is the Tenant's Advocates' belief that the Tenant did not understand this, and some leniency should be given because of the language issue, the consistent and undisputed testimony is that the Tenant agreed in writing for this \$300.00 deduction to be subtracted from the security deposit. There is no authority under the *Act* which allows me to consider hardship or any other situations, in this particular instance, with respect to this issue. As such, I find that the Tenant's claim has no merit. Consequently, I dismiss the Tenant's Application in its entirety.

Conclusion

Based on my findings above, I dismiss the Tenant's Application without leave to reapply.

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 22, 2019

Residential Tenancy Branch