



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDCT FFT

Introduction

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

JZ ("tenant") testified on behalf of the tenant in this hearing, while JL ("landlord") testified on behalf of the landlord. Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the tenant entitled to the return of their security deposit?

Is the tenant entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

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

Background and Evidence

This fixed term tenancy began on May 10, 2015 with monthly rent set at \$1,768.00, payable on the 10th day of each month. The tenant paid a security deposit in the amount of \$850.00 to the landlord at the beginning of this tenancy.

The tenant was served with a 2 Month Notice on April 1, 2019 with an effective date of June 9, 2019. The tenant had elected to give notice in order to move out before the effective date of the 2 Month Notice, and moved out on May 29, 2019. Both parties confirmed that the tenant provided a forwarding address on the move out date. Both parties also confirmed that the tenant was compensated one month's rent as required by the *Act*.

The tenant testified that although the landlord had eventually returned their deposit, the landlord waited longer than the required 15 days to return it. The tenant had consented to a deduction of \$50.00, and the landlord returned to the tenant the remaining \$800.00. The tenant could not recall the exact date the cheque was received, but believe it was on or around July 5 or July 6 of 2019. The landlord provided confirmation that the cheque was deposited on July 9, 2019. The landlord does not dispute that the cheque was sent past the 15 days required by the *Act*, but that this was done with the permission of the tenant. The landlord testified that the cheque was dated June 16, 2019, and was ready for the tenant on the date of move-out. The tenant disputes that they had consented to the late return of the security deposit.

The tenant is also seeking reimbursement of the rent for the period between the move-out date and the effective date of the 2 Month Notice.

Analysis

Section 38(1) of the *Act* requires a 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 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 return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant

agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.”

In this case, I find it undisputed that the landlord had failed to return the remaining portion of the tenant’s security deposit within 15 days of receipt of the tenant’s forwarding address in writing. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant’s security deposit. The tenant gave sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain more than the \$50.00 the tenant had agreed to. I am not satisfied that the landlord had provided sufficient evidence to support that the tenant had given permission for the landlord to hold the deposit longer than the 15 days required by the *Act*.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order in an amount equivalent to the original security deposit.

Section 50(1) of the *Act* allows a tenant who receives a notice to end tenancy for landlord’s use of the property (pursuant to section 49 of the *Act*) under these circumstances to end the tenancy early by “giving the landlord at least 10 days’ written notice to end the tenancy on a date that is earlier than the effective date of the landlord’s notice.” If a tenant elects to exercise this option, the tenant is only responsible for paying to the landlord “the proportion of the rent due to the effective date of the tenant’s notice” as per section 50(1)(b) of the *Act*.

I find that the tenant had vacated the home on May 29, 2019, although rent was paid up until June 9, 2019. Accordingly, I find that the tenant is entitled to reimbursement of rent for the period of May 30, 2019 through to June 9, 2019. I note that the tenant’s application was for a monetary order in the amount of \$648.27. As monthly rent was set at \$1768.00 according to the latest amendment on the written tenancy agreement, reimbursement of 11 days of rent is calculated at \$627.35 ($\$1,768.00/31 * 11$ days). Accordingly, I allow the tenant a monetary order in the amount of \$627.35, or the equivalent of 11 days of pro-rated rent if the monthly rent was more than \$1,768.00.

I find that the tenant is entitled to recover the filing fee for this application.

Conclusion

I issue a Monetary Order in the tenant's favour under the following terms which allows the tenant a monetary award equivalent to the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*. The tenant is also entitled to recover the cost of the filing fee for this application, as well as reimbursement of the rent for the period of May 30, 2019 through to June 9, 2019.

Item	Amount
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	850.00
Reimbursement of Rent for May 30, 2019 – June 9, 2019 (\$1,768.00//31*11)	627.35
Recovery of Filing Fee	100.00
Total Monetary Order	\$1,577.35

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of 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: October 8, 2019

Residential Tenancy Branch