Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

On June 30, 2022, 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*"), seeking a return of double the security deposit pursuant to Section 38 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. 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.

As an aside, despite informing the parties that recording of the hearing was prohibited, the Landlord made a vague reference to recording the hearing. The Landlord was reminded that recording of the hearing was prohibited, and she was asked if she was indeed recording the hearing. She provided varying answers, and it was apparent that she may still have been recording the hearing, despite being warned. Given that these hearings are recorded by the Residential Tenancy Branch anyways, it makes little sense to record them. Regardless, recording of the hearing is prohibited under Rule 6.11 of the Rules of Procedure.

The Landlord was cautioned during the hearing that if she was recording the hearing, and if she continued to do so after being warned, she could face potential financial

penalties imposed by the Compliance and Enforcement Unit. This unit of the Residential Tenancy Branch is responsible for administrative penalties that may be levied under the *Act*, has the sole authority to determine whether to proceed with a further investigation into contraventions of the *Act*, and has the sole authority to determine whether administrative penalties are warranted in certain circumstances.

The Tenant advised that the Notice of Hearing package was served to the Landlord by registered mail on July 17, 2022, and that this package was unclaimed by the Landlord (the registered mail tracking number is noted on the first page of this Decision). She submitted a screenshot of this package as proof of service to corroborate the address that it was sent to, and that it was returned to sender.

The Landlord confirmed that the address that this package was sent to was correct, but she testified that she did not receive this package. As well, she stated that she was notified of this hearing by email approximately two weeks prior to the hearing date, but she took no action until the morning of the hearing, when she called the Residential Tenancy Branch to obtain the dial-in information necessary to participate in the hearing. Based on the evidence presented before me, I am satisfied that the Tenant's Notice of Hearing package was sent to the correct address for the Landlord. As such, I am satisfied that the Landlord has been deemed to have received this package five days after it was mailed.

The Tenant then advised that she was not sure if her evidence was in the Notice of Hearing package or if she served it to the Landlord on another date. However, even if she served it later, she did not have any proof of service of such. As I am not satisfied that the Tenant served her evidence to the Landlord, I have excluded her evidence and will not consider it when rendering this Decision.

The Landlord confirmed that she did not serve her evidence to the Tenant as she did not have the Tenant's address. Given that the Landlord acknowledged that she received an email from the Residential Tenancy Branch about this hearing approximately two weeks ago, the Landlord had ample opportunity to contact the branch to find out the nature of the claims on this Application and to obtain the Tenant's address. Yet, as noted above, the Landlord initiated no action, and waited until the morning of the hearing to obtain the necessary information in order to participate in the hearing.

It is not clear, nor is it logical why the Landlord did not take any prior action, but simply waited for the day of the hearing to get any information. While the Landlord had

considerable time to obtain the Tenant's address and serve her evidence to the Tenant, given that the Landlord took no action and chose not to serve her evidence, 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?
- Is the Tenant entitled to recover the filing fee?

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 June 1, 2021, and that the tenancy ended when the Tenant gave up vacant possession of the rental unit by way of an Order of Possession on or around April 16, 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 $1,450.00 was also paid. The Landlord was cautioned, as per Section 19 of the *Act*, that she was not permitted to obtain a security deposit or pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement, and that if she does, the Tenant may deduct the overpayment from rent or otherwise recover the overpayment.

The Tenant advised that the Landlord did previously return $725.00 to her earlier; however, this was only half of the $1,450.00 security deposit that the Landlord illegally acquired. She testified that she provided her forwarding address in writing to the Landlord on April 19, 2022, for the remainder of the security deposit, but she did not have any proof of doing this. Regardless, she was seeking double the remaining

security deposit, in the amount of **$1,450.00**, because the Landlord did not comply with the *Act*.

The Landlord advised that she returned $725.00, of the $1,450.00 security deposit that she originally obtained, on or around March 2, 2022, and that she was still holding the remaining $725.00 in trust. She confirmed that she received the Tenant's forwarding address in writing on April 19, 2022; however, when she went to this address, she claimed that she did not believe that the Tenant lived there. She acknowledged that she neither returned this deposit to the Tenant, nor made an Application to claim against it. She continually insisted that she was permitted to hold onto the deposit based on two previous hearings; however, neither hearing pertained to a Landlord's claim against the security deposit (the file numbers that the Landlord provided are noted on the first page of this Decision).

The Landlord would continually attempt to make submissions on the monies that she believed the Tenant owed her, and why she believed she was entitled to hold on to the security deposit; however, these submissions were not relevant to the Tenant's Application.

The other claim on the Tenant's Application was for monetary compensation in the amount of **$1.00**. The Tenant explained that her advocate informed her to put this amount in the Application, and then inform the Arbitrator at the time of the hearing the actual amount that she was seeking. She was informed that seeking compensation in this manner would be prejudicial as the Respondent would only find out the nature of the Tenant's claim at the hearing.

Regardless, she advised that she was seeking compensation for the remaining balance of April 2022 rent, as she paid it in full, but vacated the rental unit on April 16, 2022. However, given that she was forced to give up vacant possession of the rental unit on April 16, 2022, by way of an Order of Possession due to her own negligence, I reject the Tenant's claim that she should be entitled to the return of any rent for April 2022. This claim is dismissed without leave to reapply.

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*.

When reviewing the consistent and undisputed evidence before me, I am satisfied that the Landlord received the Tenant's forwarding address in writing on April 19, 2022. 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.

It is undisputed that the Landlord did not return the remaining $725.00 to the Tenant within 15 days of April 19, 2022. Moreover, while the Landlord claimed that she was entitled to hold onto this deposit based on previous hearings, she did not submit any documentary evidence to corroborate this submission. In fact, neither of the file numbers she provided pertained to a Landlord's claim against the security deposit. As such, I do not find that there is any evidence before me to demonstrate that the Landlord filed an Application to claim against the security deposit within 15 days of receiving the forwarding address in writing on April 19, 2022.

Based on the totality of the evidence before me, as there was no evidence that the Tenant gave written authorization for the Landlord to keep any amount of the deposit, and as the Landlord did not return the deposit in full or make an Application to keep it within 15 days of April 19, 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 the Tenant was successful in this claim, I find that the Tenant is entitled to recover the $100.00 filing fee paid for this Application.

As a note, while the Tenant's current address for service is also noted on the Application, she confirmed and reiterated that address for the Landlord during the hearing (this address is also noted on the first page of this Decision).

Pursuant to Sections 38 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Doubling of the security deposit	$1,450.00
Recovery of filing fee	$100.00
TOTAL MONETARY AWARD	**$1,550.00**

Conclusion

The Tenant is provided with a Monetary Order in the amount of **$1,550.00** 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: March 22, 2023

Residential Tenancy Branch