



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- a monetary order pursuant to s. 67 for compensation or other money owed;
- an order pursuant to s. 38 for the return of the security deposit and/or the pet damage deposit; and
- return of the filing fee pursuant to s. 72

S.A. appeared as the Tenant and was joined by his brother, R.A.. R.A. did not provide submissions in the hearing nor was he affirmed. K.G. appeared as the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenant advised that the Landlord was served with the application and evidence, which the Landlord acknowledges receiving without objection. Pursuant to s. 71(2) of the *Act*, I find that the Landlord was sufficiently served with the application and evidence.

The Landlord provided response evidence to the Residential Tenancy Branch, which he acknowledged not having served on the Tenant. Rule 3.15 of the Rules of Procedure requires respondents, in this case the Landlord, to serve their evidence on the applicant and that this must be received at least 14 days prior to the hearing.

In this case, the Landlord admits he did not serve the Tenant. I find that it would be procedurally unfair to include and consider the Landlord's evidence as it was not served. Accordingly, it is excluded and shall not be considered by me.

Issues to be Decided

- 1) Is the Tenant entitled to monetary compensation?
- 2) Is the Tenant entitled to the return of his security deposit?
- 3) Is the Tenant entitled to the return of his filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

The parties confirm the following details with respect to the tenancy:

- The Tenant moved into the rental unit on February 1, 2022.
- Rent of \$1,500.00 was due on the first day of each month.
- A security deposit of \$750.00 was paid to the Landlord.

A copy of the tenancy agreement was provided to me by the Tenant, which is for a fixed one-year term reverting to a monthly periodic tenancy after January 31, 2023. I am told by the Landlord that the Tenant moved out of the rental unit on February 6, 2022. Records provided by the Tenant show he was staying in a hotel as of February 5, 2022.

Circumstances Surrounding the End of the Tenancy

The Tenant says that he had a conversation with the Landlord in early February 2023 in which he communicated that the water for the shower was cold. The Tenant says that the Landlord became hostile, told him to find a new place, and began making unfounded allegations that he and his brother were junkies.

The Tenant says that he felt unsafe in the rental unit following the conversation and that he and the Landlord agreed to ending the tenancy early. According to the Tenant, the terms of ending the tenancy early was that the Landlord would return rent for February 2022, return the security deposit, and the Tenant would leave.

The Landlord largely confirms the conversation he had with the Tenant, though says he never swore at the Tenant and says that he never issued a notice for him to leave. The Landlord advanced an allegation at the hearing that the Tenant was involved in illegal activities. This allegation is without any basis and is entirely unfounded based on the information provided to me.

Both parties refer me to a text message exchange in the Tenant's evidence from February 5, 2023, which I have reproduced below:

Tenant: Hi [Landlord], following our discussion i am letting you know that we do not feel safe staying here anymore so we will be moving our things by the end of tomorrow and we want our deposit and rent money back.

Landlord: Ok thanks
You won't get the rent back because I lost one tenant. There should be a months notice. I will give your deposit after you move out and if everything is find in the basement.

I have redacted personal identifying information from the passage above in the interest of the parties' privacy.

Tenant's Monetary Claim

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

The Tenant seeks the reimbursement of moving expenses, hotel costs, and rent for February 2022.

The Tenant characterizes the abrupt end to the tenancy as one where the Landlord forced him to move out. Based on the Landlord's unfounded allegations made at the hearing, I accept that it is likely that the parties did have an unpleasant conversation where the Landlord did accuse the Tenant of being involved in illegal activities.

However, if I were to find that the Landlord breached the Tenant's right to quiet enjoyment under s. 28 of the *Act*, it does not follow that after an unpleasant call the Tenant was forced to move out of the rental unit. The Tenant is under an obligation to mitigate his damages. In the face of a breach, the Tenant chose the most expensive and disruptive option available to him by ending the tenancy early.

I appreciate that the Tenant felt unsafe. However, I have been provided no evidence to support that the Landlord physically threatened the Tenant or that he otherwise put the Tenant in harm's way. It is clear from the text messages above that the Tenant moved out voluntarily. That may have been a practical decision, one which may have put the Tenant at ease, but the Tenant was under no obligation, legal or otherwise, to do so. There was no threat levelled by the Landlord and no notice to end the tenancy was issued either.

I find that the Tenant has failed to prove his claim given that even if there was a breach of s. 28 of the *Act*, the Tenant did not mitigate his damages. To be clear, he was under no obligation to move out of the rental unit and did so of his own volition. The cost of that decision should be entirely borne by the Tenant.

The Tenant also seeks the return of February's rent. However, the Tenant was obliged to pay that rent pursuant to the tenancy agreement and s. 26 of the *Act*, which requires rent be paid regardless of whether the Landlord complies with the *Act*, Regulation, or the tenancy agreement.

The text message does not demonstrate an agreement under which the Landlord would return either the rent or the security deposit. The Tenant's first message was an offer, which given the Landlord's reply, when read in full, was not accepted. The Landlord accepted the end of the tenancy but denied return of the security deposit without inspection for damage and denied return February's rent.

Given the above, I dismiss the Tenant's monetary claim without leave in its entirety.

Return of the Security Deposit

The Tenant says that he provided his forwarding address to the Landlord a few days after leaving the rental unit in early February 2023. The Tenant further says that the Landlord did return the \$750.00, though did so on April 26, 2023. The Tenant's evidence includes a photograph of a demand letter, dated February 27, 2022, in which the security deposit is requested. That letter has the rental unit address but does not include the forwarding address.

The Landlord denies receiving the Tenant's forwarding address and says that he did not receive it until after the Tenant filed the present application. He confirms sending the deposit late, though argued this was because the Tenant did not return the key to him at the end of the tenancy.

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address in writing, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. Under s. 38(6) of the *Act*, when a landlord fails to either repay or claim against the security deposit within the 15-day window, the landlord may not claim against the security deposit and must pay the tenant double their deposit.

In this instance, I have been provided with no evidence to support when or if the Tenant ever provided his forwarding address to the Landlord in writing. Curiously, a demand letter was made on February 27, 2022, though it did not include the Tenant's forwarding address. If the forwarding address was provided in writing, I would expect that the Tenant would have provided a copy of it in evidence or at least a clear idea on when he did provide it. The Tenant did neither.

I find that the Landlord's obligation to return the security deposit under s. 38(1) of the *Act* was not triggered as the Tenant did not provide a forwarding address to him in writing. Accordingly, I find that the doubling provision under s. 38(6) of the *Act* does not apply. Further, as the parties confirm the \$750.00 security deposit was returned on April 26, 2022, I decline to grant any order as the issue has been dealt with by the parties.

Conclusion

I dismiss the Tenant's application under s. 67 of the *Act* for monetary compensation without leave to reapply.

I dismiss the Tenant's application under s. 38 of the *Act* for the security deposit without leave to reapply.

As the Tenant was unsuccessful, I find that he is not entitled to his filing fee. I dismiss his claim under s. 72 of the *Act* 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: May 16, 2023

Residential Tenancy Branch