



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD FF

Introduction

This hearing was convened in response to an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

- An Order for the return of the security deposit (695.00) - Section 38
The tenant seeks double the security deposit as per Section 38(6)
- An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given opportunity to present all relevant evidence and testimony in respect to their claims and to make relevant prior submission to the hearing and participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

This tenancy began on November 18, 2011 and ended February 28, 2012 when the tenant vacated. Rent in the amount of \$1395.00 was payable under the tenancy agreement in advance on the 1st. (first) day of each month. At the outset of the tenancy, the landlord collected a security deposit in the amount of \$695.00 of which the landlord has returned \$452.79.

The landlord and tenant conducted a condition inspection of the rental unit at the outset, and at the end of the tenancy. The tenant testified they signed the condition inspection

reports but to date have not received copies of either inspection report. I do not have benefit of a signed Condition Inspection Report. The tenant testified that at the end of the tenancy, there were no deficiencies to the rental unit noted by either party and that the tenant and landlord did not arrive at a signed agreement as to any deductions from the security deposit.

The tenant further testified that on March 13, 2012 they e-mailed their forwarding address to the landlord which the landlord confirms receiving. The parties acknowledged that e-mail communication is their primary mode of correspondence for this tenancy. The landlord testified that they sent the tenant a cheque dated March 22, 2012 for the majority of the security deposit which was returned to the landlord due to a date error. The landlord subsequently sent the tenant \$452.79 by electronic funds transfer on April 15, 2012, which the tenant confirms receiving. The landlord testified they retained \$242.21 for cleaning, light bulbs replacement and a furnace air filter.

Analysis

On preponderance of all the relevant evidence in this matter, I have reached a Decision.

The Act and the accompanying Regulations respecting deposits are clear and prescribe the obligations of each party. Sections 23, 24 and 35, 36 of the Act prescribe how condition inspections are to be conducted at the outset and the end of a tenancy, and the consequences for each party if they do not fully participate in the processes. The End of Tenancy requirements are stated in Sections 35 and 36 of the act as follows;

(emphasis for ease)

Condition inspection: end of tenancy

- 35** (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) **Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.**

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

Consequences for tenant and landlord if report requirements not met

36 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and

(b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, **the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord**

(a) does not comply with section 35 (2) *[2 opportunities for inspection]*,

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find that the landlord did not comply with Section 35(4) of 36(2)(c), therefore the landlord's right to claim the deposits was extinguished. As a result, I find that since the landlord was not entitled to make a claim to retain the deposits - they were obligated to return the full amount of the deposit to the tenant.

Section 38(1) of the Act provides as follows (emphasis for ease)

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I accept that e-mail communication in this tenancy is the same to the parties as "in writing". I find that the landlord failed to repay the full amount of the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord currently holds \$242.21 of the security deposit and was obligated under section 38 to return the full amount of \$695.00. The amount which is doubled is the \$695.00 original amount of the deposit. As a result I find the tenant has established an entitlement claim for \$1390.00 and is further entitled to recovery of the \$50 filing fee for a total entitlement of \$1440.00. I deduct the amount of \$452.79 received from the tenant's entitlement, and I will provide the tenant a Monetary Order for the balance in the amount of \$987.21.

Conclusion

I grant the tenant a Monetary Order under section 67 for the amount of **\$987.21**. If

necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on both parties.

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 30, 2012

Residential Tenancy Branch