



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application for authorization to obtain a return of double her security deposit as a result of the landlord's alleged contravention of section 38 of the *Residential Tenancy Act* (the *Act*). Although she applied to recover her filing fee pursuant to section 72 of the *Act*, she noted that her filing fee had been waived so there was no need to consider this aspect of her application. At her request, the tenant's application to cancel her filing fee is withdrawn.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord confirmed that she received a copy of the tenant's dispute resolution hearing package posted by the tenant on the landlord's door on June 10, 2012. Although I this method of serving evidence for a monetary claim is not permitted under the *Act*, I find that the landlord has been served with the tenant's dispute resolution hearing package.

The parties testified that they sent one another their respective written evidence packages. The tenant, who is legally blind, said that she has not received the landlord's written evidence package. As the landlord could not confirm the delivery of the landlord's written evidence package, I noted that it might be necessary to adjourn this hearing to provide the tenant with an opportunity to respond to the landlord's written evidence. As the hearing progressed, it became apparent that the tenant had received copies of the two key documents included in the landlord's written evidence package (i.e., the condition inspection reports and the agreement she signed authorizing the landlord to retain \$350.00 from her security and pet damage deposits). These documents have been in the tenant's possession for over one year. As the landlord's written evidence was not in dispute, I proceeded with this hearing.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of a portion of her security deposit? Is the tenant entitled to a monetary award equivalent to the amount of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Background and Evidence

This tenancy commenced on April 1, 1997 as a one-year fixed term tenancy. When the initial term expired, the tenancy continued as a periodic tenancy until the tenant vacated the rental premises on July 31, 2011. By the end of the tenancy, monthly rent was set at \$720.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$310.00 security deposit paid on March 10, 1997. On August 9, 2009, the landlord returned the tenant's \$200.00 pet damage deposit paid on June 29, 2009. The parties agreed that the landlord provided the tenant with a joint move-in and joint move-out condition inspection report with respect to inspections that occurred on April 1, 1997 and July 31, 2011 respectively.

The tenant applied for a monetary award of \$620.00 for the return of double her security deposit plus interest because she did not believe that the landlord had acted fairly in retaining her security deposit for painting and drywall repair.

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, to either return the pet damage and security deposits (the deposits) or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposits. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposits, and the landlord must return the tenant's deposits plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the deposits (section 38(6) of the *Act*). With respect to the return of the deposits, 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, the parties agreed that the landlord was provided the tenant's forwarding address by the date the tenancy ended because the tenant was relocating to another rental unit within the same rental building.

The landlord entered into written evidence copies of an itemized agreement signed by the tenant and the landlord's representative on August 1, 2011. In this agreement, the tenant agreed to give the landlord written consent to deduct \$225.00 for repainting and \$125.00 for drywall repair from her pet damage and security deposits, for a total deduction of \$350.00. The tenant also signed the move-out condition inspection report which included the above two allowances for damage arising out of this tenancy.

The landlord entered into written evidence a copy of interest calculations for the \$310.00 security deposit held by the landlord from March 10, 1997 until July 31, 2011. These interest calculations using the Residential Tenancy Branch's Deposit Interest Calculator showed that the retained value of the tenant's security deposit as of July 31, 2011 was \$40.74. By this evidence, the landlord applied the credit of \$350.00 against the \$350.74 retained value of the security deposit. The landlord provided undisputed testimony that \$200.74 (e.g., \$200.00 for the pet damage deposit and \$0.74 for the security deposit) was returned to the tenant by way of a credit to her rental of her new apartment from the landlord.

I have considered the tenant's oral testimony that she felt pressured to sign the agreement to allow the landlord to retain her security deposit and interest. She said that she should not have been required to pay for the landlord's repainting of a suite where she resided for 14 years. Had she not signed the agreement and joint move-out condition report, she may have been successful in disputing the landlord's attempt to recover these expenses from her. However, she did sign these statements. She was aware that the landlord was intending to keep her security deposit plus applicable interest to offset the landlord's costs in repairing her rental unit.

Under these circumstances, I find that the landlord has complied with section 38(4)(a) of the *Act* and the tenant is not entitled to recover any portion of her security deposit from the landlord. The landlord requested and obtained the tenant's written consent to retain \$350.00 of the accrued \$350.74 worth of her security deposit plus interest.

Conclusion

I dismiss the tenant's application for a monetary award pursuant to section 38 of the *Act* with respect to the return of her security deposit without leave to reapply. The tenant's application for the recovery of her filing fee is withdrawn.

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: August 10, 2012

Residential Tenancy Branch