



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNSD

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 her security deposit pursuant to section 38; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

There were a number of deficiencies in the tenant's application for dispute resolution, which needed clarification and amendment with the agreement of the parties at the hearing.

Initially, the tenant identified the landlord/respondent as "AB R Inc," rather than the landlord's name as noted above. The agent for the landlord testified that "AB" is his co-agent in managing this property. However, he agreed that the tenant handed his co-agent a copy of the tenant's dispute resolution hearing package on September 20, 2012. Both parties agreed to allow the tenant to correct the name of the landlord/respondent to that which appears above. I have made this correction and amendment to the tenant's application in accordance with the powers delegated to me under the *Act*.

Another deficiency in the tenant's application was her failure to clearly identify in her application for dispute resolution that she was seeking anything beyond the recovery of her filing fee. Although she did not specifically identify her desire to seek a return of her security deposit in her application nor a monetary amount she was seeking in her application, she did complete the Details of the Dispute section of her application. From these details, the landlord's agent (the landlord) said that he understood that the tenant was attempting to obtain a monetary award for a return of security deposit funds retained by the landlord at the end of this tenancy. At the hearing, the tenant added that it had been her intention to seek a return of double her security deposit because she maintained that the landlord had failed to comply with the provisions of section 38 of the *Act*, with respect to the return of her security deposit. As the landlord was clearly prepared to speak to the tenant's claim for a return of her security deposit, I allowed the tenant to include a return of this deposit to her application for dispute resolution. I found

that there would be no contravention of the principle of natural justice by including this issue in the application before me, as the landlord understood that this would be the principal issue in dispute at this hearing. I am also satisfied that the landlord has been served with the tenant's dispute resolution hearing package.

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

Background and Evidence

This one-year fixed term tenancy commenced on or about June 14, 2011. When the fixed term tenancy expired, the tenant remained in the rental unit for another month on a periodic tenancy. By the end of the tenancy, monthly rent was set at \$1,200.00, payable in advance on the first of each month. On or about June 1, 2011, the tenant paid the landlord a security deposit of \$575.00. The parties agreed that the landlord returned \$390.00 of that security deposit to the tenant by way of a July 31, 2012 cheque to the tenant. The tenant has cashed the landlord's \$390.00 cheque. This tenancy ended by August 1, 2012, at which time the parties participated in a joint move-out condition inspection. Both parties agreed that the landlord provided a copy of the Joint Move-Out Condition Inspection Report (the Report) to the tenant.

The only written evidence submitted by either party was six pages of late evidence submitted by the tenant. The Residential Tenancy Branch received this late evidence three days before this hearing. During the course of this hearing, the tenant varied her previous testimony when she admitted that she had not sent the landlord a copy of her written evidence. She explained that she did not do so because she believed that the landlord already had this written evidence.

Since the tenant did not supply the landlord with a copy of her written evidence package in advance of this hearing, I can only rely on the sworn oral testimony of both parties with respect to the issues in dispute. The tenant gave sworn testimony that neither she nor the landlord initialled a box in the Security Deposit section of the final page of the four page Report to allow the landlord to retain \$185.00 from her security deposit. The landlord testified that the tenant did initial this section of the final page of the Report. As the tenant had provided late written evidence with respect to this issue, I asked the landlord to fax a copy of this section of the Report to assist in determining if the tenant had provided her written agreement to allow the landlord to retain any portion of her

security deposit at the end of this tenancy. Shortly after the hearing, the landlord faxed a copy of the Report where the tenant and landlord had initialled a portion of the Report.

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 security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the security 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 deposit 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 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 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 landlord confirmed that he received the tenant's forwarding address in writing on August 1, 2012, as set out in the Report. I find that the landlord has not returned the tenant's security deposit in full 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 deposit.

The central issue in dispute was the disagreement between the parties as to whether or not the tenant had given her written authorization to allow the landlord to retain \$185.00 from her security deposit. As outlined above, the parties submitted that they had different copies of the Report. The tenant testified that the landlord added references to the \$185.00 deduction for damage and a late move out fee after she signed the Report. She maintained that she did not initial a portion of the final page of that Report; the landlord maintained that she did initial a portion of that Report signifying her agreement to let the landlord keep \$185.00 from her security deposit.

In reviewing the final page of the four-page Report, I find that there are two different versions of the same document submitted by the parties. The tenant's copy (submitted as late evidence) shows no initials in two of the boxes, while the landlord's copy (faxed after the hearing) shows initials in these same two boxes.

On close inspection, however, the presence or absence of initials in the boxes in question adds little to my understanding of the tenant's claim. These portions of the final page of the Report addressed the tenant's acknowledgement and understanding

that pets were not allowed in the rental unit. The portion of the final page of the Report that did address deductions from the security deposit was set out as follows, below the pet damage deposit section of the Report:

At End of Tenancy

We the undersigned agree to the following deductions from the security deposit...

The tenant and the landlord's agent signed at the bottom of the Report with amounts of \$85.00 and \$100.00 being deducted from the tenant's security deposit. This resulted in the landlord's return of a cheque for \$390.00 to the tenant, the value of the security deposit less the deductions of \$185.00. The deductions for damage match with the itemized amounts cited by the landlord in the remainder of the Report. The tenant also signed at the bottom of the third page of the Report on August 1, 2012, confirming that the report fairly represented the condition of the premises at the end of this tenancy.

Given the tenant's failure to provide a copy of her written evidence to the landlord in support of her application for dispute resolution, I find that the tenant has not submitted sufficient evidence to demonstrate that she is entitled to an additional monetary award pursuant to section 38 of the *Act* for the return of her security deposit. In coming to this determination, I note that the onus in an application for a monetary award rests on the applicant, an onus that the tenant has not met in this case. I have also given consideration to the tenant's claim that the landlord added figures to the Report after she signed it. However, on a balance of probabilities, I find it more likely than not that the landlord obtained the tenant's written agreement to allow the landlord to retain \$185.00 from the tenant's security deposit and return \$390.00 to the tenant. For these reasons, I dismiss the tenant's application without leave to reapply. As the tenant has been unsuccessful in her application, I also dismiss her application to recover her filing fee from the landlord.

Conclusion

I dismiss the tenant's application 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: December 06, 2012

Residential Tenancy Branch