



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

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

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that she received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on December 16, 2013. She also confirmed that she received copies of the landlord's written evidence package. I am satisfied that the landlord served copies of her dispute resolution hearing and evidence packages to the tenant in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to retain all or a portion of the tenant's security deposit? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began by way of a written Residential Tenancy Agreement (the Agreement) on February 24, 2013. Monthly rent was set at \$925.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$475.00 security deposit paid on February 13, 2013.

This tenancy ended on November 30, 2013, when the tenant vacated the rental unit. The landlord confirmed that she received the tenant's September 23, 2013 advising of the tenant's intention to end her tenancy by November 30, 2013.

At the joint move-out condition inspection on November 30, 2013, the tenant signed a statement in which she agreed to allow the landlord to retain all of her \$475.00 security

deposit. The landlord entered this joint move-out condition inspection report in which the tenant agreed to let the landlord keep her security deposit into written evidence.

The landlord applied for authorization to retain the tenant's \$475.00 security deposit as per the tenant's written agreement to let her keep this deposit. At the hearing, the tenant confirmed that she had given her written agreement to allow the landlord to retain her security deposit. She did not oppose the landlord's application for dispute resolution.

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 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 return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, the landlord had 15 days after August 26, 2013 to take one of the actions outlined above. 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, I find that the tenant gave the landlord her written authorization to retain her security deposit on November 30, 2013, the same date that she provided her forwarding address to the landlord. I find that the tenant has given the landlord legal authority pursuant to section 38(4)(a) of the *Act* to retain her \$475.00 security deposit. I order the landlord to retain the tenant's security deposit in its entirety. No interest is payable over this period.

I dismiss the landlord's application to recover her filing fee for this application without leave to reapply. I do so as I find that there was no need for the landlord to have applied for dispute resolution as she already had written authorization from the tenant pursuant to section 38(4)(a) of the *Act* to retain the tenant's security deposit.

Conclusion

I order the landlord to retain the tenant's \$475.00 security deposit.

I dismiss the landlord's application to recover her filing fee 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: April 02, 2014

Residential Tenancy Branch

