



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 tenants' application pursuant to the *Residential Tenancy Act* ("the *Act*") for authorization to obtain a return of all or a portion of the security deposit pursuant to section 38 and authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties (one landlord and one tenant) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Tenant GS ("the tenant") testified that he would represent the co-tenant (his wife) at the hearing, as well. The tenant testified that he served the landlords each with copies of the tenant's dispute resolution hearing package by registered mail on November 17, 2014. Landlord JR ("the landlord") confirmed that both landlords received the tenants' package and Notice for Hearing. Based on the sworn testimony of the parties, and pursuant to section 89 of the *Act*, I find that both landlords have been served the tenants' dispute resolution hearing package.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for the return of a portion of the security deposit? Are the tenants entitled to a monetary award equivalent to the value of the security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

This tenancy in a single family home began on September 15, 2013 as a twelve and a half month fixed term. The tenants remained in the rental unit until October 28, 2014

based on a mutually agreed extension of the term. The rental amount of \$4395.00 was payable on the first of each month. The tenants paid two deposits to the landlord both on August 22, 2013; a \$2197.50 security deposit and a \$2197.50 pet damage deposit. The residential tenancy agreement submitted in evidence by the tenant confirmed the payment of these deposits.

The tenant testified that, on vacating the rental unit and conducting a walk-through condition inspection with Landlord KK, the tenant provided the landlords with a letter. That letter provided affirmation that Tenant GS had taken part in a walk-through inspection and provided the tenants' forwarding address. The letter was dated October 31, 2014. Tenant GS provided sworn undisputed testimony that Landlord KK signed a copy of the letter acknowledging its receipt.

The landlord testified that, after the tenants vacated the rental unit, she became aware of outstanding utility bills. The landlord testified that, before she returned a portion of the tenants' deposits, she calculated their portion of the outstanding bills and estimated a further amount for bills that had not yet arrived. She testified that she mailed a cheque in the amount of \$3716.79 to the tenants at their forwarding address on or about November 12, 2014. The landlord testified that she included a letter to the tenants indicating that she reduced their deposit amount to account for the outstanding utility bills.

The tenant testified that he received the portion of his security and pet damage deposits sent by the landlord. He testified that the envelope was post-marked November 17, 2014 and that he had already filed an application for dispute resolution for return of his deposits. He submitted that he proceeded with his application on the basis that the landlords had not taken the proper procedural steps in seeking to retain a portion of his security deposit nor had the landlords done so within the appropriate time period. He testified that he had not been advised of any intention of the landlord to deduct an amount from his security deposit and he had not agreed to any deduction.

Both parties testified agreeing that a condition inspection and report had been done on when the tenants moved in to the rental unit. However, both parties also testified that, while a walk-through was done at move-out, no condition inspection report was prepared or provided to the tenants. The tenant testified that he was not contacted about the outstanding utility bills. He testified that, if he had been contacted by the landlord in a timely manner, he would have been willing to discuss the matter of payment of those bills as he did not intend to leave anything unpaid.

Analysis

The landlord submitted that a tenant has an obligation to the bills related to their tenancy. The tenant submitted that a landlord has an obligation to hold a tenants' deposit and only withhold the return of that deposit by following the terms of the *Residential Tenancy Act*.

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 tenants' 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 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*). The *Act* is unequivocal with respect to the course of action a landlord must take in seeking to retain any portion of a security deposit.

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 October 31, 2014 (the provision of the tenants' forwarding address) 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." The tenant testified that he did not give the landlords written or any other authorization at the end of this tenancy to retain any portion of his security deposit. The landlord also testified that she did not seek the tenants' agreement or authorization to retain a portion of their security deposit. Therefore, section 38(4)(a) of the *Act* does not apply to the tenants' security deposit.

The landlord seeks to retain the deposit in partial satisfaction of their claim for loss with respect to unpaid utilities. The landlord testified to an outstanding balance remaining on the utility bills for the residential premises. The tenant acknowledges that the landlord is likely accurate in stating that the utility bills required further payment but he did not fail to pay them intentionally. Based on the tenant's acknowledgement with respect to the outstanding utility bills and his willingness at hearing to acknowledge the landlord should receive compensation for those bills, I find that the landlord is entitled to a monetary amount of \$678.21 representing the outstanding utility bills acknowledged as owing by Tenant GS. I formally direct that the landlord to deduct the security deposit and any interest. I note that the landlord has, in fact, already deducted this amount from the security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
- If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the *Act*;
- If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;
- If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the *Act*;
- whether or not the landlord may have a valid monetary claim.

Based on the undisputed evidence before me, I find that the landlords have neither applied for dispute resolution nor returned the tenants' security deposit in full within the required 15 days. The tenants gave sworn oral testimony that they have not waived their rights to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are therefore entitled to a monetary amount equivalent to the value of their security and pet damage deposits with any interest calculated and payable on the original amount only. No interest is payable for this period.

Having been successful in this application, I find further that the tenants are entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary award payable by the landlords to the tenants as follows;

Security Deposit paid on August 22, 2013	\$2197.50
Pet Damage Deposit paid on August 22, 2013	2197.50
Amount Equivalent to Security Deposit	2197.50

Amount Equivalent to Pet Damage Deposit	2197.50
Outstanding Utility Bills acknowledged as owing by Tenant	-678.21
Portion of Deposits previously returned by Landlord	-3716.79
Filing Fees	50.00
TOTAL MONETARY AWARD	\$4445.00

The tenant is provided with an Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 15, 2015

Residential Tenancy Branch

