



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST, also
known as NPR LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

In the first application the tenant seeks to recover the remainder of his deposit money and for the deposit doubling penalty provided by s. 38 of the *Residential Tenancy Act* (the “RTA”).

In the second application the landlord seeks to recover the cost of treating the rental unit for fleas, the cost of blinds and keys and for late fees or NSF charges.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show that the landlord is entitled to be compensated for any of the items claimed? Is the tenant entitled to enforce the doubling penalty in s. 38 of the RTA?

Background and Evidence

The rental unit is a two bedroom apartment. The tenancy started in November 2014 for a one year fixed term. The tenancy agreement provides that the tenant must move out at the end of that term.

The monthly rent was \$795.00. The tenant paid a \$397.50 security deposit and a \$397.50 pet damage deposit.

The tenant vacated the premises on October 31, 2016. The parties conducted a move-out inspection. The tenant provided his forwarding address in writing at that time.

A condition inspection report was prepared. The tenant did not authorize the landlord in writing to retain any of the deposit money. He agrees that he verbally authorized the landlord to keep \$40.00 for blinds damage.

On November 19, 2016 landlord gave the tenant a cheque dated the same day in the amount of \$446.75 as the remainder of the deposit money, after deducting \$348.25 for the items being claimed in this application. The tenant has cashed that cheque.

Ms. C. for the landlord testifies, without elaboration, that the landlord incurred the expenses claimed.

The tenant says his pets did not have fleas and that he had provided the landlord with a veterinarian's certificate to that effect the previous August.

He says that he returned the keys for the unit to "William" the manager, who acknowledged he'd receive them.

He says his December rent payment bounced because the landlord waited until December 22 to deposit the cheque.

He admits his September rent cheque bounced.

The tenant also testifies that after the end of the tenancy October 31, the landlord exercised its automatic debit service to remove \$800.00 from his account for November rent. He did not suffer any loss or inconvenience as a result. His bank corrected the matter immediately.

Ms. C. for the landlord says the November money was taken from the tenant's account because he had not given proper notice to end his tenancy.

Analysis

The Landlord's Claim

Fleas

I dismiss this item of the landlord's claim. The landlord has not shown that any flea treatment was required as the result of the tenant having pets. The tenant's evidence indicates it was not required.

Keys

I dismiss this item of the landlord's claim. Ms. C. for the landlord has no personal knowledge of this matter and I find that the tenant's evidence is the best evidence on the point. The keys were returned.

Blinds

This item is conceded. The landlord is entitled to \$40.00 for the blinds.

December Late Fee

I grant the landlord \$25.00 as per clause 10 of the tenancy agreement.

The tenant provided his rent cheque for December on December 1. The landlord attempted to negotiate the cheque on December 22 and it was dishonoured by the tenant's financial institution for lack of funds.

It was not unreasonable for the landlord to take 22 days to deposit the cheque. The tenant was obliged to ensure that his account balance remained at a level to accommodate that cheque.

December Returned Cheque

For the reasons above, the landlord is entitled to compensation for the returned cheque, in addition to the late fee.

The tenant agreement provides that in the event of a returned or NSF cheque the tenant must pay \$25.00 "plus the amount of any service fees charged by a financial institution to the landlord. Ms. C. for the landlord has no evidence about any such service fees being charged to the landlord.

I award the landlord only \$25.00 for this item.

September Returned Cheque

I allow this item. The tenant acknowledged his cheque for September “bounced.”

Again, I award the landlord only \$25.00.

The landlord is entitled to an award totalling \$115.00.

The Tenant's Claim

Section 38 of the *RTA* provides that once a tenancy has ended and once the tenant has provided the landlord with a forwarding address in writing, the landlord has 15 days to either repay the deposit money (less any amount the landlord has the tenant's written authorization to keep or that an RTB arbitrator has awarded).

If the landlord fails to comply with s. 38, it must account to the tenant for double the amount of deposit money remaining at the end of the tenancy.

The purpose of s. 38 is to prevent a landlord from unilaterally retaining any deposit money and to compel a timely accounting of it.

In this case the landlord had no authorization to keep any of the deposit money; neither the tenant's written authorization nor an arbitrator's award.

The fifteen day period began October 31. The landlord did not pay the tenant any deposit money until November 19.

In these circumstances the tenant is entitled to a doubling of the full deposit money in the amount of \$1590.00

In regard to the November 2015 rent withdrawal by the landlord, the tenant was not required to give notice to end his tenancy. The tenancy agreement prepared by the landlord states that the tenancy ended October 31, 2015 and that the tenant had to move out.

The tenant has not claimed any loss or damage in regard to the matter and so there is no basis for a monetary award.

Conclusion

The tenant is entitled to an award of \$1590.00 plus his \$100.00 filing fee for this application, less \$446.75 received and less \$115.00 awarded to the landlord.

Though the landlord has achieved some modest success on this application, it failed to comply with s. 38 of the *RTA* and so I decline to award it recovery of any portion of its filing fee.

The tenant will have a monetary order against the landlord for the remainder of \$1128.25.

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: June 19, 2016

Residential Tenancy Branch