



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed January 25, 2016 wherein she sought return of her security deposit and recovery of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

1. Is the Tenant entitled to a Monetary Order for return of double the security deposit?
2. Should the Tenant recover the filing fee paid?

Background and Evidence

The Tenant testified that the tenancy began in 2001. She stated that the Landlord purchased the home from the previous owners in approximately 2002.

The Tenant initially testified that she paid a security deposit of \$250.00 in the spring of 2001. The Tenant was not able to be more specific as to the date the tenancy began claiming she did not receive any paperwork from the Landlord.

The Tenant vacated the premises on November 30, 2015. She testified that on the date she moved she left her forwarding address on the kitchen counter and informed the Landlord who was outside the rental unit at the time. The Tenant confirmed that she did not did not sign over a portion of the security deposit.

The testimony of the Tenant was that the Landlord did not perform an incoming condition inspection report at the time he took over the rental property. The Tenant further testified that the Landlord failed to perform a move out condition inspection.

The Landlord also testified. He stated that he purchased the rental property in 2002. He could not be more specific as to the date in 2002. He confirmed that the Tenant paid a security deposit of \$220.00, not \$250.00. He noted that on the Tenant's Application for Dispute Resolution she wrote that she paid \$220.00 to the previous owner.

The Landlord confirmed that he received the Tenant's forwarding address in writing on the afternoon that she moved out on November 30, 2015.

Introduced in evidence was a letter from the Landlord to the Tenant dated December 4, 2015 wherein he wrote that he would be withholding the Tenant's security deposit. The Landlord also submitted photos and receipts in support of a claim for compensation from the Tenant.

The Landlord could not confirm when the tenancy began, only to say that she was the first tenant in the building and that she was living there at some point in 2001. He stated he was certain she was living in the rental unit in January of 2002.

In reply the Tenant stated that she did not have a copy of her tenancy agreement, but that she rented the unit from the previous owner's property manager. She also confirmed she paid \$220.00, not \$250.00 as a deposit. Again she was not able to advise when she moved into the rental unit but confirmed she was there as of January 2002.

Analysis

Section 38 of the *Residential Tenancy Act* provides as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) 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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit, plus interest. There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, plus interest. In failing to do so, the Landlord has breached section 38(1) of the Act.

The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenant and an Order from an Arbitrator. If the Landlord believes they are entitled to monetary compensation from the Tenant, he must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing him to retain a portion of the Tenant's security deposit. Here the Landlord did not have any authority under the *Act* to keep any portion of the security deposit.

Section 38(6) provides that if a Landlord does not comply with section 38(1), the Landlord must pay the Tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Although the Tenant was initially mistaken as to the amount, the parties agreed that the Tenant paid \$220.00 as a security deposit at the start of the tenancy. Neither party could be specific as to when the tenancy began, yet both agreed she was in occupation as of January 1, 2002. While it would be preferable to know the exact date the tenancy began, that information was not available to me. Accordingly, I have calculated any interest owing to the Tenant from January 1, 2002.

The Residential Tenancy Branch online *Interest Rate Calculator* indicates that the total interest owing to the Tenant from January 1, 2002 to the date of the hearing, September 12, 2016 is \$7.79. Accordingly, the Tenant is entitled to recovery of this amount as well.

Having made the above findings, I must Order, pursuant to section 38(6) and 67 of the *Act*, that the Landlord pay the Tenant the sum of **\$547.79**, comprised of double the security deposit ($\$220.00 \times 2 = \440.00) the interest on the original amounts held (\$7.79), and the \$100.00 fee for filing this Application.

The Tenant is given a formal Monetary 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, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that court.

As noted during the hearing, the Landlord filed evidence as to the condition of the rental unit in the within action; however, he failed to make an application for Dispute Resolution and is not able to make a claim through the Tenant's claim. Should he believe he is entitled to monetary compensation from the Tenant he must make his own application.

Conclusion

The Tenant is entitled to return of \$440.00 representing double her security deposit pursuant to section 38(6) and 67 of the *Residential Tenancy Act*, \$7.79 in interest paid on the initial deposit calculated from January 1, 2002 as well as recovery of the \$100.00 filing fee for a total of **\$547.79**.

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: September 12, 2016

Residential Tenancy Branch