



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This is the Tenant's Application for Dispute Resolution seeking return of the security deposit; compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

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

Much discussion took place with respect to the identity of the Landlord and whether or not the correct Landlord was served with the Notice of Hearing documents. The Landlord's property manager, GH, submitted that he was not the Landlord and that the Tenant had served the wrong person. He testified that he became property manager for the owner in January, 2016. GH stated that he received the Notice of Hearing documents and copies of the Tenant's documentary evidence on March 4, 2016, by registered mail, at his place of business.

The Act defines "landlord", as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
 - (d) a former landlord, when the context requires this;
- [reproduced as written]

Based on his testimony, I find that GH is an agent of the owner and is therefore by definition the Tenant's Landlord. GH asked that the owner be named as Landlord on this Decision and any Order which may flow from this Decision. I decline to amend the Landlord's name. It will be between the owner and GH to apportion any monetary award which may be made.

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

Issue(s) to be Decided

Has there been a breach of Section 38 of the Act by the Landlord?

Background and Evidence

The Tenant paid the Landlord a security deposit of \$1,000.00, on or about January 25, 2015. On March 3, 2015, the Tenant rented an additional bedroom in the rental property and paid an additional security deposit in the amount of \$250.00. Therefore, the total security deposit is \$1,250.00. Tenant vacated the premises on January 31, 2016.

The Tenant provided the Landlord with written notification of her forwarding address, by sending it registered mail to the Landlord on January 31, 2016.

The Tenant did not give the Landlord written permission to retain any of the security deposit.

GH stated that the Tenant gave the Landlord written notice that she was ending the tenancy on December 1, 2016. He stated that the tenancy was a fixed term tenancy, due to expire February 28, 2016, and that the Landlord did not accept the Tenant's notice to end the fixed term lease prematurely.

Analysis

The Act contains comprehensive provisions on dealing with security and pet damage deposits. Under Section 38 to the Act, the Landlord is required to handle the security deposit as follows:

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.

...

(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.

[reproduced as written]

I note that paragraph 4 of the tenancy agreement used by the parties expresses this portion of the Act as well.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of Section 38 of the Act.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit.

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, as required under Section 38.

The Landlord is at liberty to file an application for alleged rent or damages; however, the issue of the security deposit has now been conclusively dealt with in this Hearing.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$2,600.00**, comprised of double the security deposit (2 x \$1,250.00) and the \$100.00 fee for filing this Application.

Conclusion

The Tenant is hereby given a formal 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.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: October 18, 2016

Residential Tenancy Branch