



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing convened as a result of the Tenant's Application for Dispute Resolution wherein the Tenant requested return of double her security deposit and to recover the filing fee.

Both parties appeared at the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to return of double her security deposit?
2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified as follows. She stated that the tenancy began April 1, 2009. Rent was payable in the amount of \$1,200.00 per month including all utilities. The Tenant paid a security deposit of \$600.00 at the start of the tenancy. The Tenant stated that she moved out of the rental unit on April 30, 2016.

Introduced in evidence was a letter dated May 14, 2016 wherein the Tenant provided the Landlord with her forwarding address in writing and asked for return of the \$600.00 security deposit.

Also introduced in evidence was a letter from the Landlord dated August 4, 2016 wherein the Landlord confirms receipt of the Tenant's forwarding address. In this letter the Landlord also details expenses he claims to have incurred as a result of the condition in which the rental unit was left by the Tenant.

The Tenant testified that the Landlord did not complete a move in or move out condition inspection report.

The Landlord testified as follows. He confirmed that the tenancy began April 1, 2009 and that the Tenant paid a security deposit of \$600.00. He further confirmed that he received the Tenants forwarding address in writing on May 20, 2016 and that he did not return the funds or make an application for authority to retain those funds.

The Landlord further confirmed that he did an informal inspection but did not conduct a move in or move out condition inspection.

The Landlord stated that he did not make a claim to retain the security deposit as he gave the Tenants two months free rent and paid their utilities. He also stated that based on the amounts owing he felt entitled to retain the security deposit.

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. 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.

Further, by failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlord extinguished his right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act.

The security deposit is held in trust for the Tenants by the Landlord. 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 an Order from an Arbitrator. If the Landlord believes they are entitled to monetary compensation from the Tenant, they *must* either obtain the Tenant's consent to such deductions, or fil an application to obtain an Order from an Arbitrator authorizing them 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.

I note that the Landlord submitted evidence and made submissions about the condition of the rental unit after the Tenant left; however, as discussed during the hearing, the Landlord is unable to make a monetary claim through the Tenant's Application. The Landlord may still file an application for loss of rent and compensation for 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 **\$1,300.00**, comprised of double the security deposit (2 x \$600.00) and the \$100.00 fee for filing this Application.

Conclusion

The Tenant is 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: January 10, 2017

Residential Tenancy Branch