



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The tenants' testimony is as follows. The tenancy began on September 30, 2011 and ended on March 31, 2016. The tenants were obligated to pay \$3700.00 per month in rent in advance and at the outset of the tenancy the tenants paid an \$1850.00 security deposit. The tenant testified that he provided his forwarding address in writing on March 31, 2016 and then again a week later by text message. The tenant testified that the move out condition inspection report submitted by the landlord for this hearing is from September 2012 at the conclusion of the first fixed term agreement that the parties had. The tenant testified that it does not accurately reflect the unit some three and half years later. The tenant testified that a different and separate condition inspection report was conducted at move in and move out for the last year of his tenancy but he was never provided a copy of it nor did the landlord submit it for this hearing.

The landlord gave the following testimony. The landlord testified that he was not aware that he had to return the security deposit. The landlord testified that the unit had some damage to it and felt that he was able to keep the deposit because of the damages. The landlord testified that he decided that it made sense to use the original move in condition inspection report when the tenant moved out and just dated it from 2016.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The landlord submitted a move in condition inspection report from 2011 with the move out condition inspection conducted in September 2012. The landlord testified that the parties agreed to sign another "lease" and that the original security deposit was "signed

off” by the tenant and was applied to the new agreement. The tenant testified that the security deposit was never relinquished for damages but simply carried over to the new agreement. The tenant testified that a different and separate condition inspection report was written in March 2016, which he was never given a copy of nor submitted by the landlord for this hearing. The landlords’ documentary evidence is dated with several errors and inaccuracies on it. The landlords’ explanation for using a previous and dated condition inspection report lacked logic and I therefore cannot rely on it.

The tenant said he is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that 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.*

*And Section 38 (6) says 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.*

The landlord confirmed that he did not file an application to retain the deposit nor did he have the tenants' permission to keep it. Based on the above I find that the landlord has not complied with Section 38 of the Act and that the tenant is entitled to the return of double his security deposit $\$1750.00 \times 2 = \3700.00 .

The tenant is entitled to the recovery of the \$100.00 filing fee for this application.

Conclusion

The tenant has established a claim for \$3800.00. I grant the tenant an order under section 67 for the balance due of \$3800.00. This order may be filed in the Small Claims 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: January 17, 2017

Residential Tenancy Branch