Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RIDGEVIEW VILLAGE WEIDNER APARTMENT HOMES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application by the tenant filed under the Residential Tenancy Act (the "Act") for a monetary order for return of double the security deposit and the pet damage deposit (the "Deposits") and the filing fee for the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing in person on August 23, 2016, the landlord did not appear. I find that the landlord has been duly served in accordance with the Act.

The tenant appeared, gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

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.

Issue to be Decided

Is the tenant entitled to a monetary order for return of double the Deposits?

Background and Evidence

The tenancy began on May 2015. Rent in the amount of $1,400.00 was payable on the first of each month. A security deposit of $700.00 and a pet damage deposit of $700.00 were paid by the tenants.

The tenant testified that they vacated the premises on June 30, 2016. . The tenant stated that they provided the landlord with a written notice of the forwarding address on May 31, 2016, when they gave the landlord their notice to end the tenancy. The tenant stated they also gave to the landlord a second time, their forwarding address at the end of the tenancy.

The tenant testified that they received from the landlord a cheque in the amount of $1,221.1; however, they did not authorize the landlord to retain any amount from the

Deposits. The tenant stated that they contacted the landlord about the unauthorized deduction, which was for utilities and service fee; however, this matter has never been resolved.

<u>Analysis</u>

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

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

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.

…

(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.

(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.

In this case, there was no evidence that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address, which was given on May 31, 2016 and again on June 30, 2016.

I accept the undisputed testimony of the tenant that they did not agree in writing that the landlord may retain any amount from the Deposits.

I find the landlord has breached 38(1) of the Act.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlord did not have any authority under the Act to keep any portion of the Deposits. Therefore, I find that the landlord was not entitled to retain any portion of the Deposits.

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.

As the landlord did return the amount of $1,221.11 to the tenant, I find the landlord did returned the pet damage deposit of $700.00 in full, as the unauthorized deduction were not for pet damage. I find the double provision of the Act will only apply to the security deposit.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pays the tenant the sum of **$1,500.00**, comprised of double the security deposit ($700.00) on the original amounts held and to recover the $100.00 fee for filing this Application. The amount of **$1,221.11 - $700.00(pet deposit) =521.11**, which was returned to the tenant, is deducted from the amount awarded.

The tenant is given a formal monetary order pursuant to 67 of the Act, in the amount of **$978.89.** 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. The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application for return of double the security deposit is granted. The tenant is granted a monetary order in the above noted amount.

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: February 23, 2017

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Residential Tenancy Branch