



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

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

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance I confirmed that there were no issues with service of the tenant's application for dispute resolution. The landlord confirmed receipt of the tenant's application package. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with copies of the application and materials.

Issue(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of their 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 and Evidence

The parties agreed on the following facts. This tenancy started in August, 2016 when the tenant took over the tenancy from a previous tenant and ended October 31, 2016. A security deposit of \$500.00 was transferred from the previous tenant into the tenant's

name. The security deposit is still held by the landlord. A condition inspection report was not prepared at the start of the tenancy.

The landlord testified that no condition inspection report was performed and no report was completed at either the start or end of the tenancy. The landlord confirmed that she has not made an application in accordance with the *Act*, to retain the security deposit. She stated that the tenant was not contacted to inspect the condition of the rental unit together at the end of the tenancy as she was advised by the police to have no contact with the tenant after a number of earlier disputes.

The rental unit was inspected by the landlord after the tenant moved out. The landlord testified that the rental unit was left in poor condition and she seeks to retain the full amount of the security deposit for the cost of cleaning. She also said that the tenant failed to pay the full amount of rent and an additional \$100.00 is owing for the tenancy.

The tenant testified that he provided the landlord with his forwarding address in a letter dated December 5, 2016. A copy of the letter was submitted into evidence and the landlord confirmed receipt. The tenant testified that the landlord did not contact him to participate in inspecting the rental unit at the end of the tenancy. The tenant said that he has not given written authorization that the landlord may retain the security deposit.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I find that the tenant provided written notice of the forwarding address on December 5, 2016. I accept the evidence of the parties that the landlord failed to return the security deposit to the tenant within 15 days of December 5, 2016, the time frame granted under section 38 (1)(c) of the *Act* nor did the landlord make an application claiming against the security deposit during that period.

The landlord testified that the rental unit required cleaning after the tenancy. She also testified that the tenant failed to pay the full amount of rent and that there were earlier conflicts with the tenant. She said that the tenant has filmed her and she has called the

police to report on the tenant's activities. All of this evidence is irrelevant to the matter at hand.

If the landlord had concerns arising from the condition of the rental unit, the landlord should have addressed these matters within 15 days of receiving a copy of the tenant's forwarding address or within 15 days of the end of tenancy. Even if repairs to the rental unit were required the landlord must take action pursuant to the *Act* to pursue this matter. Landlords are in the business of renting out residential property and it is their responsibility to educate themselves as to what is permitted under the *Act*. The landlord cannot decide to simply keep the damage deposit as recourse for their loss without following the legislative steps.

The landlord testified that she believes the security deposit should not be paid to the tenant as it was originally paid by the previous tenant. I find that the previous tenant gave written authorization on July 31, 2016 to have the \$500.00 security deposit transferred to be used for this tenancy.

The parties have testified that no condition inspection report was prepared at the start of the tenancy. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
...
(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Accordingly, I also find that the landlord has extinguished any right to claim against the security deposit by failing to prepare a condition inspection report at the start of the tenancy.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. I accept the tenant's evidence that he has not waived his right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$1,000.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

As the tenant was successful in their application, he is entitled to recovery of the \$100.00 filing fee.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1,100.00 against the landlord. The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: March 20, 2017

Residential Tenancy Branch