



Dispute Resolution Services

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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 his security deposit and to recover the filing fee.

The hearing was conducted by teleconference on March 30, 2017. Both parties called into 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.

Preliminary Matter

During the hearing the Landlord confirmed the correct spelling of his first name. I amend the Tenant's Application for Dispute Resolution pursuant to section 64(3)(c) of the *Residential Tenancy Act* to accurately note the Landlord's name on the Application as well as in the style of cause in this my Decision and resulting Order.

Issues to be Decided

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

Background and Evidence

The Tenant testified that this tenancy began in approximately July 2011. The Tenant testified that he paid a \$500.00 security deposit at the start of the tenancy and paid a pet damage deposit in the amount of \$250.00 later in December of 2013 when he and his wife obtained a pet.

The Tenant testified that the tenancy ended July 2016. The Tenant stated that on August 12, 2016 the Landlord called the Tenant to do a “walk through of the property”. The Tenant stated that the Landlord had completed the move out condition inspection report before he arrived. The Tenant confirmed that he did not sign the report as he did not agree with the contents and believed it had not been completed properly. The report was not provided in evidence by either party.

The Tenant further testified that he gave the Landlord his forwarding at that time which the Landlord wrote on the move out condition inspection report. The Tenant stated that the Landlord stated that he would send a cheque “within the week” however he said that when he called the Landlord after the week had passed the Landlord stated that he needed more time to clean and take care of other matters.

The Tenant confirmed that the Landlord’s wife returned \$500.00 of the \$750.00 deposit. The Tenant testified that he did not agree that the Landlord could retain \$250.00 of the deposit.

The Landlord testified as follows. He confirmed that he collected \$750.00 in deposits from the Tenant. He testified that he did a formal move out inspection on July 31, 2016 and the Tenants came back to get their deposit on August 12, 2016. He confirmed that he received their forwarding address at that time.

The Landlord also confirmed that he retained \$250.00 of the Tenant’s deposits because of the work he needed to do to repair and clean the rental unit. He stated that he was not aware that he was required to make an application for dispute resolution within 15 days of receipt of their forwarding address.

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.

I accept the Tenant's testimony that he did not agree that the Landlord could retain any portion of the security or pet damage deposit.

The parties agree that the Tenant provided his forwarding address on August 12, 2016.

If the Landlord and the Tenant are unable to agree to the repayment of the deposits or to deductions to be made, the Landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

The Landlord confirmed that he did not make an Application for Dispute Resolution for an Order authorizing him to retain the Tenant's deposits within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant.

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 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 testified about the condition of the rental unit after the Tenant left; however, the Landlord is unable to make a monetary claim through the Tenants' Application. The Landlord has to file their *own* Application to keep the deposit as explained above.

The Landlord may still file an application for alleged rent and alleged damages; however, the issue of the security deposit has now been conclusively dealt with in this hearing.

Residential Tenancy Policy Guideline 17—Security Deposit and Set Off provides as follows:

5. The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

- Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ($\$800 - \$275 = \525).

- Example B: A tenant paid \$400 as a security deposit. During the tenancy, the parties agreed that the landlord use \$100 from the security deposit towards the payment of rent one month. The landlord did not return any amount. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount that remained after the reduction of the security deposit during the tenancy. In this example, the amount of the monetary order is \$600.00 ($\$400 - \$100 = \300; $\$300 \times 2 = \600).

Example C: A tenant paid \$400 as a security deposit. The tenant agreed in writing to allow the landlord to retain \$100. The landlord returned \$250 within 15 days of receiving the tenant's forwarding address in writing. The landlord retained \$50 without written authorization.

The arbitrator doubles the amount that remained after the reduction authorized by the tenant, less the amount actually returned to the tenant. In this example, the amount of the monetary order is \$350 ($\$400 - \$100 = \$300 \times 2 = \600 less amount actually returned \$250).

The case before me fits within Example A above. Accordingly, I award the Tenant \$1,000.00 calculated as follows:

$\$750.00$ (total of deposits paid) $\times 2 = \$1,500.00$ - $\$500.00$ returned = $\$1,000.00$

As the Tenant has been substantially successful, I also award him recovery of the \$100.00 filing fee.

The Landlord was cautioned to follow the *Residential Tenancy Act* and *Residential Tenancy Act Regulation* as they relate to both move in and move out condition inspection reports.

Conclusion

Pursuant to sections 38, 67 and 72 of the *Act*, I Order that the Landlord pay the Tenant the sum of **\$1,100.00**. The Tenant is given a formal Monetary Order in this amount and must service a copy of this Order on the Landlord 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 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 30, 2017

Residential Tenancy Branch