



Dispute Resolution Services

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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* (the *Act*) for:

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

Both parties attended 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 or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the tenant's application and their respective evidence.

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 September 2016 and ended December 31, 2016. The monthly rent throughout the tenancy was \$750.00. The tenant provided a security deposit of \$375.00 at the start of the tenancy and is still held by the landlord.

The parties confirmed that no condition inspection report was prepared at either the start or end of the tenancy. The landlord confirmed that he has not made an application in accordance with the *Act* to retain the security deposit. The landlord testified that the tenant was in breach of the tenancy agreement by having pets in the rental unit and not providing sufficient notice of their intention to end the tenancy. The landlord said that the tenant has not provided written

authorization that the landlord may keep the security deposit but it should be retained because of the breach and damage to the rental unit.

The tenant testified that a forwarding address was provided to the landlord by letter dated January 17, 2017. The landlord confirmed receipt of the letter. The tenant said they have not provided any 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 January 17, 2017. I accept the evidence of the parties that the landlord failed to return the full security deposit to the tenant within 15 days of January 17, 2017, 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.

If the landlord had concerns arising from the breach of the tenancy agreement, damage to the rental unit or other issues with the tenancy the landlord could have addressed those 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 there was a legitimate complaint the landlord must receive written authorization from the tenant pursuant to the *Act* to retain the security deposit. The landlord cannot decide to simply keep the damage deposit as recourse for their loss without following the legislative steps.

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 they have not waived their 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 \$750.00 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, they are entitled to recovery of the \$100.00 filing fee.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$850.00 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: April 4, 2017

Residential Tenancy Branch