



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- a monetary order for return of the security deposit; and
- recovery of the filing fee paid for this application from the landlord.

The landlord and tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord and tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

Although the landlord submitted late evidence, the tenant confirmed that they had no issues with service of the landlord's evidence. Therefore, I considered all the evidence that was submitted by the parties.

Issues to be Decided

- Is the tenant entitled to a monetary order for return of the security deposit?
- Is the tenant entitled to recovery of the filing fee paid for this application from the landlord?

Background and Evidence

The undisputed evidence established that the tenant entered into a month to month tenancy which started on June 1, 2016 and ended on January 30, 2017. Rent in the amount of \$775.00 was payable on the 1st day of each month. The tenant paid a

security deposit in the amount of \$400.00 on May 27, 2016. I note that this amount exceeds the amount a landlord is allowed to accept for a security deposit.

The landlord and tenant agree that there was a move in inspection on May 31, 2016 with the landlord and tenant present at which time a condition inspection report was completed.

The testimony of the landlord and tenant differs as to the circumstances surrounding the move out inspection. The tenant testified that she asked the landlord to conduct the move out inspection on January 30, 2017, the last day of the tenancy. The tenant testified that the landlord responded by yelling at her to get off the property and telling her that she would not get her deposit back. The tenant testified that she didn't feel safe and she left as she had vacated the unit on that date.

The landlord testified that in discussing the move out inspection, the landlord and tenant made arrangements for the move out inspection to be carried out on January 31, 2017 at 1:00 p.m. The landlord testified that he made these arrangements with the tenant. The landlord testified that he attended the rental unit to carry out the inspection but the tenant did not show up. The landlord proceeded to enter the suite and conduct the inspection. The landlord did not complete a condition inspection report for the move out inspection.

The tenant testified that she did not know of a new date for the inspection. The tenant denied having made arrangements to carry out the move out inspection on January 31, 2017. The tenant testified that she was not offered a second opportunity to carry out the move out inspection.

The tenant testified that she sent her forwarding address to the landlord by registered mail on February 3, 2017. The landlord did not pick up the mailing until February 18, 2017. The landlord did not return the security deposit nor make an application for dispute resolution to claim against the security deposit. These facts are not disputed by the landlord.

The tenant is seeking return of the security deposit in the amount of \$400.00.

The tenant is seeking recovery of the \$100.00 filing fee for this application from the landlord.

Analysis

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

Section 35(2) of the *Act* states that at the end of a tenancy the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

Section 17 of the Residential Tenancy Regulation (the “Regulations”) requires that a landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times. If the tenant is not available at the time offered, the tenant may propose an alternative time. The landlord must consider the tenant’s proposed time prior to proposing a second opportunity. The landlord is required to provide the tenant with a second opportunity by providing the tenant with a notice in the approved written form.

Section 36(1) of the *Act* states that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the landlord has complied with section 35(2) of the *Act* (offered 2 opportunities for an inspection) and the tenant has not participated on either occasion.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant’s forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. The start of the 15 days is triggered by the date of the latest event to occur.

Pursuant to section 38(6) of the *Act*, if the landlord fails to comply with section 38(1) of the *Act*, then the landlord may not make a claim against the deposit. The landlord must also pay the tenant double the amount of the security deposit with interest payable on the original amount of the security deposit.

Residential Tenancy Branch Policy Guideline #17 also states that if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant’s forwarding address is received in writing, the arbitrator will order the return of double the deposit.

Section 38(2) of the *Act* provides that the landlord is not required to pay the security deposit or pet damage deposit, or both, if the tenant's right to the return of the deposit has been extinguished under section 36(1) of the *Act*.

I find that there is sufficient evidence to satisfy me that tenant has not extinguished their right to the security deposit. I do not need to decide whether or not the parties arranged a date for the inspection the landlord claims was arranged for January 31, 2017. Even if I found that arrangements had been made for a first inspection on January 31, 2017, there is insufficient evidence that the landlord offered the tenant a second opportunity in writing in accordance with section 35(2) of the *Act* and section 17 of the Regulations. In making this finding, I have taken into consideration the fact that the landlord did not provide the tenant with a notice of a final opportunity for an inspection in the approved written form.

The landlord's failure to offer a second opportunity for an inspection means that the tenant has not extinguished their right to the security deposit by being absent for the previous opportunity.

Based upon the undisputed testimony of the parties, I find that the tenancy ended on January 30, 2017. I find that the landlord received the tenant's forwarding address on February 18, 2017, the date the landlord picked up the registered mailing. As the latest triggering event occurred on February 18, 2017, I find that the landlord was required to return the security deposit or file an application for dispute resolution seeking to retain the deposit within 15 days. I find that the landlord did not take any of these steps. Therefore, I find that the tenant is entitled to a monetary order for the return of double the amount of the security deposit, with interest payable on the original amount of the deposit, in accordance with section 38(6) of the *Act*. There is no interest payable over this period.

Although the tenant has not claimed for return of double the security deposit, I find that the tenant did not specifically waive the doubling of the security deposit in her Application or at the hearing. Therefore, I am required to award double the security deposit in accordance with the *Act*.

As the tenant's application is successful, I find that the tenant is entitled to recover the \$100.00 filing fee for their application from the landlord.

Based upon the foregoing, I find that the tenant is entitled to a monetary order in the amount of \$ 900.00 as follows:

Item	Amount
Return of Security Deposit	\$ 400.00
Return of Double the Security Deposit	\$ 400.00
Filing Fee	\$ 100.00
Total Monetary Order	\$ 900.00

Conclusion

The tenant's application is successful.

The tenant is granted a monetary Order in the amount of \$900.00 for double the security deposit and the filing fee. This monetary Order must be served on the landlord as soon as possible. Should the landlord fail to comply with this monetary Order, it 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: May 08, 2017

Residential Tenancy Branch