



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC 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 their security deposit pursuant to section 38;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; 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 their sworn testimony, to call witnesses, and to make submissions. KL interpreted for the tenant in this hearing.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

During the hearing, the tenant indicated that the landlord's last and first name were incorrectly switched on the application. As the landlord had no objection, the application is amended to reflect the correct order of the landlord's name.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of their security deposit pursuant to section 38 of the *Act*?

Is the tenant entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant testified that this tenancy began in April 2014. Monthly rent was set at \$1,700.00, payable on the first of each month. The current landlord took over this tenancy in May of 2016 when he purchased it from the previous landlord. In April of 2014, the tenant paid the landlord \$850.00 for the security deposit, and a \$1,700.00 pet damage deposit. A written tenancy agreement was signed indicating these amounts. A copy was provided in the tenant's evidence.

On May 28, 2016, the tenant and the previous landlord signed a mutual agreement to end the tenancy, which was submitted in evidence. The new landlord was present as well, and the two parties signed a new written tenancy agreement for a three month fixed-term tenancy that was to end on August 31, 2016. Rent remained the same, and the security deposit portion of the document was crossed out with two zero figures beside the boxes. As the tenant did not receive his deposits back from the previous landlord, the tenant assumed that this meant that the deposits would be transferred to the new tenancy agreement. The tenant did not pay the new landlord any additional deposits.

The tenant moved out at the end of the tenancy on August 31, 2016, and did not receive his deposits from the new landlord. He requested the return of the deposits, and was told by the new landlord that he was never in possession of these deposits. The tenant sent to the new landlord, by registered mail, a formal request for the return of his deposits as he felt the new owner was responsible for returning them. The tenant did contact the previous landlord in September 2016, and was told that he had owed the strata money, and the landlord hung up on him. The tenant admitted in the hearing that there was never any mention of either deposit when signing the new tenancy agreement as the tenant assumed that everything remained the same, and that the money would be transferred to the new landlord.

The landlord testified in this hearing that he had purchased the property from the previous owner, and that this new tenancy was a new and separate one from the previous one the tenant had with the previous landlord. He stated that the realtor was present, who held a dual relationship and represented both himself and the previous owner. He stated that the previous owner was not present for the signing of the new tenancy agreement, and he had waived the security and pet damage deposits for this tenancy as the tenant had a good reference. The landlord submitted that the tenant

signed and initialed all pages of the new tenancy agreement indicating that the tenant understood.

The landlord indicated that he had filed for dispute resolution after this tenancy had ended in August 2017 for monetary compensation for damage to the rental unit. The hearing was held on March 7, 2017. The Arbitrator granted the landlord a monetary order for \$3,503.70 in compensation for damages that were caused by the tenant. The landlord testified that he was never given any security or pet damage deposit by the tenant, or the previous landlord, and had to file for dispute resolution in order to be compensated for the damages the tenant had caused.

Analysis

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. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agree in writing the landlord may retain the amount to pay a liability or obligation of the tenants."

In this case, I find that a tenancy had ended on May 31, 2016 per the Mutual Agreement that was signed by the previous landlord and tenant. As per the written tenancy agreement the deposits were paid, and applied to this previous tenancy, and not the new one. A new tenancy agreement began with the new landlord on June 1, 2016 with the new landlord, where no deposits were paid to the new landlord as noted on the written tenancy agreement.

I accept the landlord's testimony that he had never collected any deposits for this tenancy, and this is further supported by the decision of the Arbitrator who granted the current landlord a monetary award after the hearing. The Arbitrator's decision made no reference to any security deposits despite the landlord being successful in his monetary application. The tenant admitted that there was no discussion about the deposits at the end of the previous tenancy, nor when signing the new tenancy agreement.

I find that the tenant's application for the return of the security and pet damage deposits applies to the previous tenancy with the previous landlord, and not the new one. Accordingly I dismiss the tenant's monetary application. As the filing fee is normally awarded to the successful party after the hearing, the tenant's application for recovery of the filing fee is dismissed.

Conclusion

The tenant's entire application naming the current landlord as the Respondent is dismissed.

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 5, 2017

Residential Tenancy Branch