



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD FF

Introduction

Both parties attended the hearing and the tenant provided evidence that he had served the landlord with the Application for Dispute Resolution by registered mail and with his forwarding address on April 1, 2017 in writing and previously in email on February 27, 2017. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to return double the security deposit pursuant to Section 38; and
- b) To recover the filing fee for this application.

Preliminary Issue and Procedure:

The landlord requested an Adjournment for she said she had requested the Residential Tenancy Branch to join her Application for Dispute Resolution filed on May 23, 2017 to this Application. The Branch told her to request the consent of the tenant. He said he had no time to contact them. Her Application is scheduled for August 8, 2017. Her assistant said that her insurance company intends to assist her at the hearing and they may contact the tenant through his insurer to settle the matter instead. Therefore an adjournment should be granted.

The tenant objected to granting an adjournment. He pointed out that he had filed his Application for the return of double his security deposit on April 10, 2017 and the landlord did not file her Application until over a month later on May 23, 2017. He said he has been waiting for the refund of his security deposit since the end of February 2017 and an adjournment at this time is significantly prejudicing his claim.

Rule 6 of the Residential Tenancy Branch Rules of Procedure provide rules on rescheduling and adjournments. Rule 6.1 states the Branch will reschedule if written consent is received from both parties at least 3 days before the scheduled date for the hearing. I find the tenant does not consent to the adjournment or rescheduling.

Rule 6.3 provides an arbitrator may adjourn the proceeding after the hearing commences. The criteria for granting an adjournment are set out in Rule 6.4. In applying the criteria, I find there would be considerable prejudice to the tenant Rule 6.4 (e) if the hearing is adjourned as he filed his Application for compensation on April 10, 2017 which is already beyond the time limit provided in section 38 of the Act for the landlord to either refund the deposit or file an Application to claim against it. I also find an adjournment is unlikely to contribute to a resolution of the matter as the landlord has a significant amount of evidence which is hotly contested and the tenant's Application is on his rights under section 38 to a refund of the deposit. I declined to grant an adjournment and the hearing proceeded.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that he is entitled to the return of double the security deposit according to section 38 of the Act?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. Both parties agreed that the tenancy commenced January 16, 2016, a security deposit of \$1800 was paid and rent was \$3600 a month. The tenant vacated the unit on February 24, 2017 and the tenant said they did a condition inspection report but did not record it. He provided his forwarding address on February 27, 2017 by email and again by letter on April 1, 2017. The landlord disagreed that the inspection on February 24, 2017 was a final inspection. She said she went over and was surprised that he had moved out. She did not see the floor damage then. She waited for the concierge to come and the tenants left. She noticed the damage at that point but did not realize how serious it was as it seemed like a small area of floor damage. She did not realize the whole floor would need to be replaced. The tenant said he received \$800 refund from the landlord but she kept the \$1000 remainder of the deposit. He had agreed initially she could retain \$400 if it would settle the matter but she chose to pursue it instead.

The landlord said she retained the deposit for the tenant had caused damage to the unit and it took time to get estimates and talk to the insurer. She said she had provided numerous opportunities for a final inspection on March 7, 2017, by telephone calls and on April 1, 2017 but the tenant refused to attend. The tenant said he had done the inspection with her on February 24, 2017 and her subsequent emails and messages were all related to negotiating a payment for the alleged floor damage.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

The Residential Tenancy Act provides:

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.*

*(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.*

(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.*

In most situations, section 38(1) of the Act requires a landlord, within 15 days of the later 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 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 pay the tenant double the amount of the security deposit (section 38(6)).

I find the evidence of the tenant credible that he paid \$1800 security deposit, served the landlord with his forwarding address in writing on February 27, 2017 and again on April 1, 2017 requesting the refund of his deposit. I find he gave no permission for the landlord to retain any of the deposit unless she agreed to settle the matter which she did not. However, he agreed she had refunded \$800 of his deposit. I find the landlord agreed with these facts.

I find the landlord claims that the tenant had forfeited his deposit because he did not attend after she issued him several invitations for an inspection and an Appointment for a Final Opportunity to schedule an inspection. However, I find insufficient evidence to

support her statements. I find the pages to which she referred me in her evidence were invitations to look at the floor and negotiate. I find the tenant's evidence more credible that they did the inspection on February 24, 2017 because this is supported by the landlord's statement in the hearing that they were both there on February 24, 2017 when he had moved out and they inspected together but she did not notice the damage until after she called the concierge and the tenant had left.

I find the landlord filed an Application to claim against the deposit on May 23, 2017 which is beyond the 15 day limit set out in section 38 above. I find the tenant entitled to recover double his security deposit. As discussed with the parties in the hearing, the landlord will have her hearing about her damages in August 2017 and possibly any monetary orders obtained by the parties might be set off against each other or used for negotiating purposes with the insurance companies.

Conclusion:

I find the tenant entitled to a monetary order as calculated below and to recover the filing fee for this application.

Original security deposit	1800.00
Double security deposit s. 38	1800.00
Filing fee	100.00
Less refunded to tenant	-800.00
Total Monetary Order to Tenant	2900.00

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: June 14, 2017

Residential Tenancy Branch