



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL R.E.S. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF MNSD

Introduction

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the corporate landlord's application for:

- an application to keep all or part of the damage deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee from the tenants, pursuant to section 72 of the *Act*.

While the landlord's agent, C.S. (the "landlord"), attended the hearing by way of conference call, the tenants did not. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord provided undisputed testimony that the tenants were individually sent copies of the Landlord's Application for Dispute Resolution and evidentiary packages by way of Canada Post Registered Mail on March 17, 2017. The Canada Post tracking numbers for each package were provided to the hearing. In accordance with sections 88, 89 and 90 of the *Act*, I find the tenants deemed to be served with the landlord's dispute resolution hearing package on March 22, 2017, five days after their posting.

Issue(s) to be Decided

Is the landlord entitled to retain the tenants' security deposit?

Can the landlord recover the filing fee?

Background and Evidence

Undisputed testimony was provided to the hearing by the landlord that this was a fixed-term tenancy which began on June 1, 2016 and ended on February 28, 2017. He explained that rent was \$1,930.00 per month and a security deposit of \$965.00 collected at the outset of the tenancy continues to be held by the landlord.

The landlord stated that he was seeking to retain the tenants' security deposit in satisfaction for unpaid rent related to their broken fixed term tenancy. The landlord said that he lost ½ month's rent due to the tenants' early departure. Their tenancy was set to end on May 31, 2017 but the tenants vacated the rental unit on February 28, 2017. After some efforts on the landlord's behalf, the apartment was re-rented on March 17, 2017.

The landlord detailed the efforts that were made to re-rent the apartment. Notably in January 2017, ads were put on two different websites advertising the apartment for immediate occupation.

On March 10, 2017 the parties performed a condition inspection together. On March 16, 2017 the tenants emailed the landlord with their forwarding.

Analysis

Section 38 of the *Act* requires the landlord to either return a tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit within 15 days after the *later* of the end of a tenancy and, or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord is required to 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 authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

Undisputed testimony provided to the hearing by the landlord explained that the tenants' vacated the rental unit on February 28, 2017. On March 10, 2017 the tenants emailed their forwarding address to the landlord. The landlord had therefore until March 25, 2017 to apply for dispute resolution. An examination of the landlord's application along with his undisputed oral testimony, demonstrates that the landlord applied to retain the

tenants' security deposit on March 16, 2017. The landlord has therefore met the requirements of section 38 of the *Act* to retain the tenants' security deposit.

The landlord explained that he has suffered a loss of ½ a month's rent, approximately \$965.00. He said this was the result of the tenants' vacating the rental unit prior to the expiration of their fixed term tenancy agreement. I find that the landlord has therefore suffered a loss of half a month's rent, or \$965.00 and allow the landlord to retain the entire amount of the tenants' security deposit.

As the landlord was successful in his application, he may recover the \$100.00 filing fee from the tenant.

Conclusion

The landlord may retain the tenant's security deposit in full.

The landlord is provided with a Monetary Order of \$100.00 representing a return of the filing fee. The tenants must be served with this Order as soon as possible. Should the tenants 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: August 16, 2017

Residential Tenancy Branch