



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed May 8, 2017 wherein the Tenant sought return of double the security deposit paid pursuant to section 38 of the *Residential Tenancy Act*.

The hearing was conducted by teleconference on October 10, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the Tenant entitled to return of double her security deposit?

Background and Evidence

The Tenant testified that the tenancy began March 1, 2012. She stated that she paid monthly rent in the amount of \$1,700.00 as well as a security deposit in the amount of \$850.00 and a pet damage deposit in the amount of \$850.00.

Introduced in evidence was a copy of the Move in/out Condition Inspection Report. The Tenant stated that she did not agree with the contents of the move out condition inspection report

although she signed it because the Landlords' son, T.M., stated that they would not return the deposit unless she signed. The Tenant noted on the move out inspection that she was signing "under protest".

The Tenant testified that she vacated the rental unit on April 21, 2017 and provided her forwarding address (which was her friend's address) to the Landlords on April 5, 2017.

The Tenant confirmed that the Landlords returned the sum of \$1,496.00 to her at the address she provided. She further confirmed that she did not agree to this deduction.

The Tenant confirmed that her current address is the same as the address on her Application for Dispute Resolution.

The Landlord, S.N., responded to the Tenant's claim as follows. She confirmed that the Tenant paid a security deposit in the amount of \$850.00 and a pet damage deposit in the amount of \$850.00 for a total of \$1,700.00.

S.N. testified that she returned the sum of \$1,496.00 to the Tenant. She confirmed that the Tenant did not agree to the \$208.00 deduction from her deposit.

S.N. testified that she received the Tenant's forwarding address on April 5, 2017. She further confirmed that she did not make an application for dispute resolution.

Analysis

The Tenant applies for return of double her security and pet damage deposit. Section 38 of the *Residential Tenancy Act* deals with security deposits and provides as follows:

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(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.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(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.

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

The parties agreed that the Tenant did not consent to the Landlords retaining any portion of her security or pet damage deposit.

Based on the testimony of the parties, I find that the Landlords received the Tenant's forwarding address in writing on April 5, 2017.

The Landlords failed to apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required under section 38(1) of the *Act*.

The security deposit is held in trust for the Tenant by the Landlord. The Landlords may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenant or an Order from an Arbitrator. If the Landlords believe they are entitled to monetary compensation from the Tenants, they *must* either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenants' security deposit. Here the Landlords did not have any authority under the *Act* to keep any portion of the security deposit.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the *Act*, that the Landlords pay the Tenants double the security and pet damage deposit paid. As the Landlords have returned some of these funds, I must turn to *Residential Tenancy Policy Guideline 17—Security Deposit and Set Off* which provides as follows:

5. The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

- Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is $\$525.00$ ($\$800 - \$275 = \$525$).

- Example B: A tenant paid \$400 as a security deposit. During the tenancy, the parties agreed that the landlord use \$100 from the security deposit towards the payment of rent one month. The landlord did not return any amount. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount that remained after the reduction of the security deposit during the tenancy. In this example, the amount of the monetary order is $\$600.00$ ($\$400 - \$100 = \$300$; $\$300 \times 2 = \600).

Example C: A tenant paid \$400 as a security deposit. The tenant agreed in writing to allow the landlord to retain \$100. The landlord returned \$250 within 15 days of receiving the tenant's forwarding address in writing. The landlord retained \$50 without written authorization.

The arbitrator doubles the amount that remained after the reduction authorized by the tenant, less the amount actually returned to the tenant. In this example,

the amount of the monetary order is \$350 (\$400 - \$100 = \$300 x 2 = \$600 less amount actually returned \$250).

Example A most closely parallels the case before me. Accordingly, I find the Tenant is entitled to the sum of **\$1,904.00** calculated as follows.

\$850.00 (security) + \$850.00 (pet damage) = **\$1,700.00** (total deposits paid)

\$1,700.00 x 2 (as per section 38(6) of the *Act*) = **\$3,400.00**

\$3,400.00 - \$1,496.00 (amount paid to Tenant) = **\$1,904.00** (owing to Tenant)

The Landlords submitted evidence in support of a monetary claim for repairs and cleaning of the rental unit. As discussed during the hearing, the Landlords may not make a monetary claim through the Tenant's Application. The Landlords may still make an application for monetary compensation; however, the issue of the Tenant's deposits has now been conclusively dealt with.

Conclusion

The Tenant is entitled to a monetary order in the amount of **\$1,904.00** representing double the security and pet damage deposit paid less the amounts already returned to her.

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: October 11, 2017

Residential Tenancy Branch