



Dispute Resolution Services

Page: 1

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 wherein the Tenant requested return of double the security deposit, recovery of the filing fee and his registered mail costs.

The hearing was conducted by teleconference on December 12, 2017. Only the Tenant called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified that he served the Landlord with the Notice of Hearing and the original Application on June 28, 2017 by registered mail. The Tenant testified that he was informed that this package was signed for on June 30, 2017. The Tenant also sent an amendment by registered mail on October 3, 2017 which he advised was signed for by October 4, 2017. A copy of the registered mail tracking numbers for both packages provided on the unpublished cover page of this my Decision.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served with Notice of the Hearing as of July 2, 2017 and I proceeded with the hearing in their absence.

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 Tenant's 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

1. Is the Tenant entitled to return of his security deposit?

2. Should the Tenant recover the filing fee?
3. Should the Tenant recover the cost of registered mail?

Background and Evidence

The Tenant testified that the tenancy began with a previous owner May 6, 2006 at which time the Tenant paid a security deposit in the amount of \$800.00.

The Tenant testified that the Landlord did not do a move in condition inspection report.

The property was purchased by the named Landlord, S.H., on or before June 1, 2016; the Tenants testified that S.H. also did not do a move in condition inspection, nor did he perform one when the Tenant vacated the rental unit.

The Tenant confirmed that he did not agree to the Landlord retaining any portion of his security deposit and specifically asked for its return on June 7, 2017 by email. A copy of that email was provided in evidence and which also contained the following Landlord's response:

As for the deposit, we were disappointed when we found out that the contract was breached and the unit was being subleased. We kept you as a tenet in good faith even though we knew we could have got a higher rent from a different tenant. I hope you understand our position and that we can move on. We had a good relationship and would like it to remain that way.

The Tenant confirmed that the Landlord did not return his deposit and did not make an application for its retention within 15 days of receipt of the Tenant's forwarding address.

The Tenant confirmed that he used the online calculator and determined that no interest is owed on the \$800.00.

By amendment, the Tenant also requested recovery of the \$100.00 filing fee as well as recovery of the registered mail costs.

Analysis

The Tenant seeks return of double his security deposit pursuant to section 38 of the *Residential Tenancy Act* which 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.

I accept the Tenant's undisputed evidence that he did not agree to the Landlord retaining any portion of their security deposit. I find, based on the Landlord's response to the Tenant's email, that the Landlord received the Tenant's forwarding address in writing on June 7, 2017.

The Landlord 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*.

Further, by failing to perform incoming or outgoing condition inspection reports in accordance with the *Act*, the Landlord also extinguished their right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the *Act*.

The security deposit is held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenants an Order from an Arbitrator. If the Landlord believes they are entitled to monetary compensation from the Tenant, 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 Tenant's 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 the sum of **\$1,600.00**, comprised of double the security deposit (2 x \$800.00). As the Tenant has been successful, I also award him recovery of the \$100.00 fee for filing this Application. As discussed during the hearing, registered mail costs are not recoverable under the *Act*, and I therefore deny the Tenant's claim for recovery.

Conclusion

The Tenant is granted a Monetary Order in the amount of **\$1,700.00** and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the 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: December 12, 2017

Residential Tenancy Branch