



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, 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 the security deposit and pet damage deposit pursuant to section 38; 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 affirmed testimony, to make submissions and to call witnesses.

As both parties were present service of documents was confirmed. The parties testified that they were in receipt of the tenant's application for dispute resolution and their respective evidence package. I find that the parties were served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of their security deposit and pet damage deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

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

Background and Evidence

The parties agreed on the following facts. This fixed-term tenancy began in June, 2016. A security deposit of \$1,750 and pet damage deposit of \$1,750.00 were paid at the start of the tenancy and are still held by the landlord. The monthly rent is \$3,500.00 payable on the first of each month. The parties prepared a condition inspection report at the start of the tenancy.

The tenant vacated the rental unit at the end of June, 2017. The parties participated in a move-out inspection on June 28, 2017 but as the parties disagreed on the scope of damage to the rental unit a condition inspection report was not signed. A copy of a condition inspection report was submitted into written evidence. The report does not provide the date of a move-in or move-out inspection and is not signed by either party. The tenant provided the landlord a forwarding address in writing by a letter dated June 28, 2017.

The tenant testified that he informed the landlord of his intention to end the tenancy by a telephone conversation on May 29, 2017. The tenant said that he was informed by the landlord that a written notice was not needed. The tenant said they have not provided any written authorization that the landlord may retain any portion of the security deposit or pet damage deposit.

The landlord submits that because the tenant never provided notice to end tenancy in writing the tenant remained obligated to pay the rent for the months of July and August, 2017. The landlord submits that the rental unit required considerable repairs and cleaning after the tenancy ended. The landlord submits that because of the unpaid rent and expenses for repairs he chose to retain the deposits.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit and pet damage deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit and pet damage deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the deposits as per section 38(4)(a).

I accept the evidence of the parties that the tenant provided a forwarding address in writing on June 28, 2017. I accept the evidence of the parties that the landlord failed to

return the full security deposit and pet damage deposit to the tenant within 15 days of June 28, 2017, the time frame granted under section 38 (1)(c) of the *Act* nor did the landlord make an application claiming against the security deposit and pet damage deposit during that period.

If the landlord had concerns arising from unpaid rent or damages to the rental unit, the landlord could have addressed those matters within 15 days of receiving a copy of the tenant's forwarding address or within 15 days of the end of tenancy. Even if there was a legitimate arrear the landlord must receive written authorization from the tenant pursuant to the *Act* to apply the security deposit. If there was a rental arrear the onus was on the landlord to apply in accordance with the *Act* for a monetary order to be authorized to retain an amount from the deposits for this tenancy. The landlord cannot decide to simply keep the damage deposits as recourse for their loss without following the legislative steps.

Section 36 of the *Act* outlines the consequences to the parties if reporting requirements are not met. The section reads in part:

36 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

...

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The parties provided evidence that they participated in a move-out inspection together but as they were unable to agree on the scope of damages the condition inspection report was not completed. I find that in accordance with section 36(2)(c) of the *Act*, the landlord has extinguished his right to claim against the deposits for damage to the rental unit by failing to prepare a condition inspection report after completing the move-out inspection. I find that the copy of the condition inspection report submitted into evidence does not meet the requirements of a report as it does not provide the date that an inspection was conducted and is not signed by either party.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit and pet damage deposit in full within the required 15 days. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these

circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$7,000.00 Monetary Order, double the value of the security deposit and pet damage deposit paid for this tenancy. No interest is payable over this period.

As the tenant was successful in their application, they are entitled to recovery of the \$100.00 filing fee.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$7,100.00 against the landlord. The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: January 30, 2018

Residential Tenancy Branch