



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 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 in attendance I confirmed service. The landlord confirmed receipt of the tenant's application for dispute resolution. Neither party submitted documentary evidence. I find that the landlord was served with the tenant's application in accordance with section 89 of the *Act*.

At the outset of the hearing the landlord briefly made an application for an adjournment. The landlord said that he has been preoccupied during the past six months since being served the tenant's application and has not had time to prepare. The tenant opposed the adjournment request seeking to resolve the matter in a timely basis.

Rule 7.8 of the Residential Tenancy Branch Rules of Procedure grants me the authority to determine whether the circumstances warrant an adjournment of the hearing.

Rule 7.9 lists some of the criteria to consider:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;

- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

The landlord did not make a substantial submission beyond stating that he had been preoccupied and could not prepare. I find that the landlord has not met the criteria established for granting an adjournment and proceeded with the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of their security 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 tenancy began in April, 2013 and ended May 31, 2017. The tenant paid a security deposit of \$750.00 at the start of the tenancy. No condition inspection report was prepared at either the start or the end of the tenancy.

The tenant provided his forwarding address in writing to the landlord on May 31, 2017. The landlord has not returned any portion of the security deposit.

The landlord vaguely alluded to damage in the rental unit. The landlord confirmed that he was not provided written authorization by the tenant to retain any amount of the security deposit nor has he filed an application to retain the deposit.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security 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. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the evidence of the parties that this tenancy ended on May 31, 2017 and the tenant gave the landlord the forwarding address in writing on that date. The landlord did not return the security deposit to the tenant nor did he file an application for dispute resolution for authorization to retain the deposit within the 15 days provided under the *Act*.

The landlord made vague reference to damage in the rental unit but I find this to be irrelevant. The landlord has not filed an application for authorization to recover any cost of repairs from the security deposit. The undisputed evidence of the parties is that the tenant has not authorized the landlord to deduct any portion of the security deposit.

If the landlord had concerns about the condition of the rental unit at the end of the tenancy and sought to recover his losses from the security deposit he ought to have filed an application for dispute resolution in accordance with the *Act*. A landlord cannot simply withhold the security deposit for a tenancy without following the appropriate legislative steps. I find that the landlord has failed to return the security deposit for this tenancy to the tenant without the tenant's authorization or filing an application to claim against the deposit.

Furthermore, the parties gave evidence that no condition inspection report was prepared at any time during the tenancy. Section 36 of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if he does not comply with the requirements of section 35 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

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 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 \$1,500.00 Monetary Order, double the value of the security 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 \$1,600.00 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: February 20, 2018

Residential Tenancy Branch