



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUNCREST CABINETS INC.
and [tenant name suppressed to protect privacy]

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. The personal landlord confirmed she represented the named corporate landlord as well.

As both parties were in attendance service was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and evidence. The landlord testified that they had not filed any materials. I find that the landlord was served with the tenant's application and evidence 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 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 agree on the following facts. This tenancy began in April, 2016 and ended June 1, 2017. A security deposit of \$975.00 was paid at the start of the tenancy. The parties participated in both a move-in and move-out inspection. A move-out condition inspection report was prepared on or about June 1, 2017. The tenant provided their forwarding address on the condition inspection report. Neither party submitted a copy of the condition inspection report in the written evidence.

The landlord testified that the tenant gave written authorization on the condition inspection report that the landlord may arrange carpet cleaning of the rental unit and that the cost could be deducted from the security deposit. The tenant disputes that he gave such written authorization on the inspection report. Submitted in the written evidence is email correspondence between the parties where the tenant inquires if he will be “required to have the carpets cleaned” and the landlord responds “As far as the carpets I can have them cleaned after you have moved out.”

The landlord deducted \$331.84 from the security deposit for carpet cleaning and other cleaning and repairs. The landlord testified that after the tenant vacated they discovered other deficiencies not recorded in the condition inspection report including the microwave handle, dirt on the cabinets and clogged drains. The landlord said that while she did not have written authorization to deduct the cost of cleaning beyond the carpet cleaning she chose to withhold additional amounts for the cleaning and repairs.

The landlord said that she issued a cheque returning the tenant’s security deposit less the amount she deducted on June 28, 2017 when the tenant requested the return of the funds. A copy of the cheque for the amount of \$643.16 was submitted into written evidence. The tenant testified that he has not cashed the cheque as he disagreed with the landlord’s deductions.

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 or about June 1, 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 she file an application for dispute resolution for authorization to retain the deposit within the 15 days provided under the *Act*. The landlord first issued a cheque returning a portion of the security deposit on June 28, 2017 outside of the timeframe provided under the *Act*.

The landlord submits that she had the tenant's written authorization to deduct the cost of carpet cleaning from the security deposit. The tenant says that he gave no written authorization that any amount may be deducted. As neither party submitted a copy of the condition inspection report I base my findings on the testimony of the parties and the surrounding documentary evidence submitted.

Based on the totality of the evidence I find it more likely that the tenant did not provide written authorization that the landlord may deduct from the security deposit. The landlord relies upon the email correspondence as evidence that there was an agreement. In her email the landlord states "As far as the carpets I can have them cleaned after you have moved out." This is a unilateral proposition made by the landlord. This is not a case where the tenant's silence in response can be deemed to be tacit acceptance. In order for there to be genuine authorization I find that the tenant must be in agreement with the amount of the deduction, the purpose of the deduction and provide written confirmation that he understands and is in agreement with the amount to be deducted. I find the landlord's submission that the tenant gave her blanket authorization to deduct any amount from the security deposit to not be credible or reasonable under the circumstances. I accept the tenant's submission that he did not provide any written authorization that the landlord may deduct any amount from the security deposit.

The landlord made reference to damage to the rental unit and the cleaning she had to perform. I find the landlord's submissions to be irrelevant to the matter at hand. 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 their losses from the security deposit they 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 the tenant provided a forwarding address on the condition inspection report prepared at the end of the tenancy on or about June 1, 2017. Pursuant to section 38(1) of the *Act*, within 15 days of the end of the tenancy or receiving the tenant's forwarding address the landlord must either repay the deposit or file an application claiming against the security deposit. The landlord did not do either of those things within the 15 day timeframe provided under the *Act*. The landlord testified that she issued a cheque returning the security deposit on June 28, 2017 when the tenant contacted her to request its return.

A landlord cannot simply withhold a security deposit until the tenant requests that it be returned to them. The undisputed evidence of the parties is that the tenant provided the landlord with a forwarding address on or about June 1, 2017. Therefore, the landlord had within 15 days from that date to either return the security deposit or file an application to retain it. A landlord cannot simply hold the security deposit until it is requested by the tenant.

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 \$1,950.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

While the landlord has issued a cheque in the amount of \$643.16, the tenant has not yet cashed that cheque. The parties were uncertain if that cheque would still be honored at the financial institution. I find it appropriate to direct that this earlier cheque be destroyed and a new cheque in the full amount of the monetary award be issued by the landlord.

As the tenant's application was successful the tenant may recover the \$100.00 filing fee for this application.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$2,050.00 against the landlords. The tenant is provided with a Monetary Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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: March 13, 2018

Residential Tenancy Branch