



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Parc McLean Townhomes
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A participatory hearing was held, via teleconference, on June 6, 2018. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- An order that the Landlord return all or part of the security deposit or pet damage deposit

The Tenant and the Landlord attended the hearing. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

Background and Evidence

The parties confirmed that the Tenant paid a security deposit of \$720.00 and that the Landlord still holds this amount. The parties also confirmed that the Tenant left the rental on June 26, 2017, the same day the move-out inspection was done. The Landlord provided a copy of the condition inspection report which showed that a move-in inspection was done at the start of the tenancy in February of 2011. The condition

inspection report also showed that both parties signed the document at the start of the tenancy.

During the hearing, the Landlord explained that the Tenant attended the move-out inspection on June 26, 2017, at 11am, and she walked out 2/3 of the way through the inspection because she was not happy with the Landlord's assessment of the unit. The Tenant stated she walked out because she was not happy with what the Landlord was asking her to pay for.

The Tenant stated that she did not authorize the Landlord to retain any of the deposit. The Landlord stated that he did not file an application against the Tenant, as he believed he could show up to this hearing and explain why he wanted to keep the security deposit.

The Landlord stated that he did not recall exactly what date he got the Tenant's forwarding address in writing but stated he did get it. The Tenant stated she sent her forwarding address in writing on July 15, 2017, by registered mail.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, both parties confirmed that the Tenant moved out of the rental unit on June 26, 2017, which I find reflects the end of the tenancy. The Landlord confirmed that he got the Tenant's forwarding address in writing but could not recall when. Pursuant to section 88 and 90 of the *Act*, I find the Landlord is deemed served with the Tenant's forwarding address in writing on July 20, 2017, the fifth day after its registered mailing.

I note the Tenant did not authorize any deductions from the security deposit. I also note that, as per the documentary evidence, there was a move-in inspection, and both parties signed the condition inspection report. Further, although the Tenant did not sign the move out inspection report because she did not agree with the Landlord's assessment and walked out, the evidence before me indicates that both parties

participated in these inspections. I find neither party extinguished their right to the security deposit.

Pursuant to section 38(1) of the Act, the Landlord had 15 days from receipt of the forwarding address in writing (until August 4, 2017) to either repay the security deposit (in full) to the Tenant or make a claim against it by filing an application for dispute resolution. The Landlord did neither and I find the Landlord breached section 38(1) of the Act.

Accordingly, as per section 38(6)(b) of the Act, I find the Tenant is entitled to recover double the amount of the security deposit (\$720.00 x 2). Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenant paid to make the application for dispute resolution.

In summary, I issued the Tenant a monetary order for \$1,540.00 based on the Landlord's failure to deal with the security deposit in accordance with section 38 of the *Act*.

Conclusion

I grant the Tenants a monetary order in the amount of **\$1,540.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: June 06, 2018

Residential Tenancy Branch