



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

On April 16, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") requesting the return of his security deposit. The matter was set for a conference call.

The Tenant attended the conference call hearing and was affirmed to be truthful in his testimony. As the Landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified the Application for Dispute Resolution and Notice of Hearing were served on the Landlord, by Canada Post Registered mail, sent on April 21, 2018. A Canada post tracking number was provided as evidence of service. I find that the Landlord has been duly served in accordance with sections 89 and 90 of the *Act*.

The Tenant was provided with the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

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

Procedural Matters

During the hearing, the Tenant testified that he had also paid a pet damage deposit that he had not included in his original claim as he had lost the receipt that Landlord had given him in 2005 when he paid that deposit. The Tenant stated that he would also like

that money back but that he was unsure if he could ask for it, as he could not locate the receipt.

The Tenant testified that he had been advised, in October of 2015, by the previous owners that the rental property had been sold. The previous owners advised him that the full details of his tenancy, including the amounts of the security deposit and pet damage deposit, being held by the Landlord, had been included in the contract of sale, and that his deposits had been transferred to the new Landlord.

As per section 4.2 of the Rules of Procedure an application may be amended in a hearing if the requested amendment should have been reasonably anticipated by the other party.

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I accept the undisputed testimony of the Tenant that he paid both a security deposit and a pet damage deposit at the beginning of his tenancy. I find that the Landlord ought to have reasonably anticipated that he would have to repay or make a claim against both deposits at the end of this tenancy.

Therefore, I am allowing the Tenant to amend his application, during his hearing, to include a request for the return of his pet damage deposit.

Issues to be Decided

- Has there been a breach of Section 38 of the *Act* by the Landlord?
- Is the Tenant entitled to the return of his security deposit and pet damage deposit?

Background and Evidence

The Tenant testified that the tenancy began on February 1, 2005, as a month to month tenancy. Rent in the amount of \$750.00 was to be paid by the first day of each month. The Tenant paid the Landlord a \$375.00 security deposit and a \$375.00 pet damage deposit. The Tenant entered a copy of the receipt he received from the Landlord for his security deposit into documentary evidence. The Tenant testified that he had also received a receipt for the pet damage deposit but that he had misplaced that receipt.

The Tenant testified that the rental property sold in October 2015 to the current owner and that the previous owners had transferred both his security deposit and pet damage deposit to the new owner during the sale. The Tenant also testified that the previous owner had advised him that the amounts of both of his deposits, had been included in the statement of adjustments for the sale.

The Tenant testified that he gave written notice to end his tenancy, on October 29, 2017, and that he had included his forwarding address in that notice. The Tenant provided a copy of that notice into documentary evidence. The Tenant testified that he moved out of the rental unit on November 30, 2017, returning the keys to the unit to the Landlord's son. The Tenant testified that he asked the Landlord's son to conduct the move-out inspection at that time, but he refused. The Tenant stated that despite several attempts to contact the Landlord, over the past few months, the Landlord has failed to return the security and pet damage deposits.

Analysis

Based on the evidence before me, the testimony of the Tenant, and on a balance of probabilities:

I find that the Tenant paid both a \$375.00 security deposit and a \$375.00 pet damage deposit at the beginning of his tenancy. I find that the Tenant provided his forwarding address in writing to the Landlord on October 29, 2017, and that the Tenant ended his tenancy in accordance with the *Act* on November 30, 2017, when he moved out.

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposit or repay the security and pet damage deposits to the tenant.

I find that the Landlord had until December 15, 2017, to comply with section 38(1) of the *Act* by either repaying the deposits in full to the Tenant or submitting an Application for Dispute resolution to claim against the deposits.

There is no evidence before me that that the Landlord made an application to claim against either of the Tenant's deposits.

At no time does a landlord have the right to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the landlord and the tenant are unable to agree to the repayment of the security deposit or that deductions be made, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that the landlord thinks they are entitled to keep even a small portion of the deposit, based on unproven claims.

I find that the Landlord breached section 38 (1) of the *Act* by not return the Tenant's security and pet damage deposits or filing a claim against them within the statutory time line.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposits within the 15 days, the landlord must pay the tenant double the security and pet damage deposit.

Therefore, I find that pursuant to section 38(6) of the *Act* the Tenant is entitled to the return of double his security and pet damage deposits, plus interest on the original amount held. I find for the Tenant, in the amount of \$1,526.54, granting a monetary order for the return of double the security and pet damage deposits, plus the accrued interest.

Security Deposit	\$375.00
Pet Damage Deposit	\$375.00
Total Deposits Taken	\$750.00
Interest due (on original deposits)	\$26.54
Deposits Doubled	\$750.00
Owing	\$1,526.54

Conclusion

I find that the Landlord has breached section 38 of the *Act*, by failing to repay or make a claim against the Tenant's deposits as required by the *Act*.

I find for the Tenant pursuant to sections 38 and 72 of the *Act*. I grant the Tenant a Monetary Order in the amount of \$1,526.54 for the return of double the security deposit, double the pet damage deposit, and the accrued interest on the original amounts. The Tenant is provided with this 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: June 8, 2018

Residential Tenancy Branch