



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDT, FFT

Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution wherein the Tenant requested monetary compensation from the Landlord including return of double the security deposit paid, and to recover the filing fee.

The hearing was conducted by teleconference on June 5, 2018. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The parties provided their email addresses at the outset of the hearing. The parties confirmed their understanding that this Decision would be emailed to both parties and that any applicable Orders would be emailed to the appropriate party.

The Tenant named the Landlord's property manager, J.H., as the Landlord. The Landlord, V.Y., confirmed that he is the owner of the property and although the tenancy agreement is in his company name, I.M.C., the company does not own the property.

Pursuant to section 64(3)(c) of the *Residential Tenancy Act* I amend the Tenant's Application for Dispute Resolution to properly name the Landlord.

Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit paid?
2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified that the tenancy began August 2016 and ended on August 27, 2017 when he vacated the rental unit. Monthly rent was payable in the amount of \$775.00 and the Tenant paid a security deposit in the amount of \$387.50.

The Tenant further stated that the Landlord's agent, J.H., completed the move out condition inspection report on August 31, 2017. At the time of inspection J.H. refused to provide a copy of the report to the Tenant; when the Tenant protested, J.H. asked for his forwarding address in writing and stated he would send a copy of the report as well as the Tenant's security deposit by mail.

The Tenant testified that he called the Landlord's agent three times and each time the agent yelled and screamed at him and said he wasn't getting it back.

The Tenant confirmed that he did not give the Landlord permission to retain his security deposit.

The Tenant applied for Dispute Resolution on October 29, 2017.

The Tenant further confirmed that he did not receive an application for dispute resolution from the Landlord. He confirmed that in January 2018 he moved to Alberta and provided his updated address to the Residential Tenancy Branch at that time. His updated address is noted on the unpublished cover page of this my Decision.

In response to the Tenant's submissions the Landlord testified as follows.

The Landlord confirmed that he owns the property. He also confirmed that the property was managed by J.H. during the tenancy.

The Landlord confirmed that the monthly rent was \$775.00 and the Tenant paid a security deposit of \$387.50. He also confirmed that the tenancy ended on August 27, 2017 and the move out condition inspection was completed on August 31, 2017.

The Landlord confirmed that his agent did not give the Tenant a copy of the move out condition within seven days of the end of the tenancy as required.

The Landlord testified that he did not return the \$387.50 to the Tenant because the Tenant did not give 30 days' notice to end the tenancy, rather in mid-August he called the Landlord's manager and stated he would move out at the end of August, 2017.

The Landlord also stated that the Tenant informed the Landlord that he had someone who would rent the property at the end of the month. The Landlord stated that he was prepared to accept the Tenant's notice provided that he didn't suffer any financial loss, but as the Tenant failed to clean the rental unit he was not able to retain the new tenant.

Analysis

The Tenant applies for return of double his security deposit pursuant to section 38 of the *Residential Tenancy Act* which provides as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenant's evidence that he did not agree to the Landlord retaining any portion of their security deposit.

I find that the Landlords received the Tenants forwarding address in writing on August 31, 2017 at the time of the move out condition inspection.

The Landlord failed to apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required under section 38(1) of the *Act*.

Section 18 of the *Residential Tenancy Regulation* provides as follows:

Condition inspection report

- 18** (1) The landlord must give the tenant a copy of the signed condition inspection report
- (a) of an inspection made under section 23 of the Act, promptly and in any event within 7 days after the condition inspection is completed, and
 - (b) of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of
 - (i) the date the condition inspection is completed, and
 - (ii) the date the landlord receives the tenant's forwarding address in writing.
- (2) The landlord must use a service method described in section 88 of the Act *[service of documents]*.

I accept the Tenant's evidence that the Landlord failed to provide him with a copy of the move out Condition Inspection Report as required by section 18. By failing to perform the outgoing condition inspection report in accordance with the *Act* and the *Regulation*, the Landlord has extinguished his right to claim against the security deposit for damages, pursuant to section 36(2) of the *Act*.

The security deposit is held in trust for the Tenant by the Landlord. The Landlord may only keep the security deposit through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator. If the Landlord believes he is entitled to monetary compensation from the Tenant, he must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenants' security deposit. Here the Landlord did not have any authority under the *Act* to keep any portion of the security deposit.

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the *Act*, that the Landlords pay the Tenants the sum of **\$875.00**, comprised of double the security deposit (2 x \$387.50) and the \$100.00 fee for filing this Application.

Conclusion

The Tenant is given a formal Monetary Order in the amount of **\$875.00**. He must serve a copy of the Order on the Landlord as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

During the hearing the Landlord stated that he retained the funds due to the condition of the rental unit at the end of the tenancy. The Landlord is at liberty to apply for monetary compensation from the Tenant; however, this does not affect the Landlord's obligation to pay the Tenant as Ordered in this my Decision. The parties are also reminded that should another application be made, they must file all evidence in support of their position under that file number, as evidence filed in this proceeding will not be available to the presiding Arbitrator hearing any future application.

The parties are also reminded of the two limitation period imposed by section 60 of the *Residential Tenancy Act*. For the purposes of that section, I find that the tenancy ended on August 31, 2017.

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 5, 2018

Residential Tenancy Branch