



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDT, FFT

Introduction

This hearing convened as a result of Tenants' Application for Dispute Resolution wherein the Tenants requested monetary compensation from the Landlord for 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 during 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.

Issues to be Decided

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

Background and Evidence

The Tenant, S.C., testified as follows. He confirmed that the tenancy began September 30, 2016. Monthly rent was payable in the amount of \$1,750.00. The Tenants paid a security deposit of \$1,095.00, which included a door key and the visitor's pass.

The Tenants moved from the rental unit on September 10, 2017.

The Tenants provided the Landlord the Landlord with their forwarding address on September 25, 2017. Introduced in evidence was a copy of the receipt for payment of the registered mail package.

The Tenant testified that he did not give the Landlord permission to retain any portion of their security deposit. He also confirmed that the Landlord did not return the funds, nor did the Landlord make an application to retain the funds.

The Landlord's agent, H.Y., testified as follows. H.Y. confirmed that the Tenants paid \$1,095.00 as a security deposit. He also confirmed that they retained those funds and used the funds towards repairs and cleaning of the rental unit after the tenancy ended.

H.Y. also confirmed that they received the Tenants' forwarding address in late September 2017

Analysis

The Tenants apply for return of double their 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 Tenants evidence that they did not agree to the Landlord retaining any portion of their security deposit.

The Landlord's agent confirmed receipt of the Tenants' forwarding address in late September 2017. The Tenants provided evidence that their forwarding address was sent to the Landlord by registered mail on September 25, 2017. Section 90 of the *Act* provides that documents sent by registered mail are deemed served five days later; accordingly, I find that the Landlord received the Tenants forwarding address in writing on September 30, 2017.

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

As noted during the hearing the security deposit is held in trust for the Tenants by the Landlord. The Landlord may only keep all, or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenants an Order from an Arbitrator. If the Landlord believes they are entitled to monetary compensation from the Tenants, they 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 **\$2,290.00**, comprised of double the security deposit (2 x \$1,095.00) and the \$100.00 fee for filing this Application.

Conclusion

The Tenants are given a formal Monetary Order in the amount of **\$2,290.00**. They 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's agent stated that the Landlord 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 Tenants; however, this does not affect the Landlord's obligation to pay the Tenants 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 September 10, 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