



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the *Act*) for the return of the security deposit and the recovery of the filing fee paid for this application.

An agent for the Tenant (the “Tenant”) and the Landlord were present for the duration of the teleconference hearing. Both parties were affirmed to be truthful in their testimony. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package along with a copy of the Tenant’s evidence by registered mail. The Landlord did not submit any evidence prior to 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.

Issue to be Decided

Is the Tenant entitled to the return of the security deposit?

Background and Evidence

Both parties were in agreement as to the details of the tenancy. The Tenant was the previous owner of the property and through the arrangements of the sale, it was agreed that the previous owner could reside in the rental unit as a tenant.

The possession date of the home was March 4, 2018. A tenancy agreement was signed on February 26, 2018 for a tenancy to commence March 4, 2018. The agreement was a

fixed term tenancy agreement for three months, but noted that the Tenant could end the agreement early with 30 days notice to the Landlord. The tenancy agreement was submitted in evidence and was signed by both the Tenant/previous owner and the Landlord/current owner.

The monthly rent was set at \$2,000.00 and the security deposit was set at \$1,000.00. A total of \$3,000.00 was transferred to the Landlord through the property sale for one month of rent and the security deposit. Notary documents regarding the sale of the property were submitted in evidence. Both parties agreed that the Landlord obtained the \$1,000.00 security deposit and \$2,000.00 for rent through the notary involved in the sale of the home.

The Tenant testified that verbal notice to end the tenancy was provided to the Landlord in early March 2018 and the keys to the rental unit were returned to the Landlord on April 1, 2018. A document dated April 1, 2018 was signed by both the Landlord and the Tenant and included the Tenant's forwarding address and confirmation of the return of the rental unit keys to the Landlord.

The Tenant testified that they did not agree to the Landlord withholding any amount from the security deposit and that they have not received any of the security deposit from the Landlord. They testified that they asked the Landlord several times as to when they would be getting the \$1,000.00 security deposit back.

The Landlord testified that he did not complete a Condition Inspection Report at the beginning or end of the tenancy. As the tenancy came about through the purchase of a property, a home inspection was completed as part of the sale. The Landlord testified that this is when he became aware that the Tenant was not opening the windows in the unit and that the resulting condensation was creating an issue. The Landlord tried talking to the Tenant, but states that they would not engage in conversation with him. Instead, he provided notice through the real estate agent that the windows needed to be kept open to prevent condensation from building up in the rental unit.

The Landlord testified that when possession of the rental unit was returned to him, he found out that the closed windows had created an issue that needed fixing and that the security deposit was held for this reason. The Landlord confirmed that he did not apply for dispute resolution against the security deposit.

The Landlord testified that he was acting in good faith when he allowed the Tenant to provide less than 30 days notice to end the tenancy and expected the Tenant to act in

good faith regarding the use of the security deposit money to offset the damages in the rental unit.

The Tenant testified that they allowed more than 15 days for the return of the security deposit and when this was not done, they had no choice but to file for dispute resolution for the return of the security deposit.

Analysis

While this tenancy came about through the purchase of a property, a tenancy arrangement was established and a landlord-tenant relationship created between the previous and current owner of the property.

The documents submitted from the notary confirm that \$2,000.00 was exchanged for rent for March 2018 and \$1,000.00 for the security deposit. Both parties agreed that a total of \$3,000.00 was provided to the Landlord for the purposes on the tenancy.

In accordance with Section 38(1) of the *Act*, a landlord has 15 days to return a security deposit or apply for dispute resolution against the security deposit, from the later date of when the tenancy ends or the forwarding address is provided in writing. As both parties confirmed that the Tenant's forwarding address was provided on April 1, 2018, the same day that the tenancy ended, I find that the Landlord had 15 days from this date to return the security deposit or apply for a claim against it. As the Landlord did not do either of these within the 15 days allowable under the *Act*, I have determined that they were in breach of Section 38(1).

Pursuant to Section 38(6), if a Landlord is not in compliance with Section 38(1), they must pay a Tenant double the amount of the security deposit. Accordingly, I find that the Tenant is entitled to the return of double the security deposit in an amount of \$2,000.00.

Although the Landlord claimed the security deposit of \$1,000.00 was needed to repair damages in the rental unit, he did not file an application to keep the security deposit or conduct a Condition Inspect Report with the Tenant at the beginning and end of the tenancy to establish any damages that may have occurred. The security deposit is held in trust for the Tenant by the Landlord and a landlord cannot retain the security deposit because they believe they are justified in keeping it.

As the Tenant was successful in their application, I also award the recovery of the filing fee paid for this application in the amount of \$100.00. A Monetary Order will be granted to the Tenant in the total amount of \$2,100.00.

Conclusion

Pursuant to Sections 38 and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$2,100.00** for the return of double the security deposit and the recovery of the filing fee for this application. 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 22, 2018

Residential Tenancy Branch