



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On May 8, 2018, the Tenant made an Application for Dispute Resolution seeking a Monetary Order for a return of double the security deposit and pet damage deposit pursuant to section 38 of the *Act* and seeking to recover the filing fee pursuant to section 72 of the *Act*.

The Tenant and the Landlord attended the hearing and all parties provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package, by registered mail, to the Landlord and he confirmed receipt of this package. As such, and in accordance with sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Tenant's Notice of Hearing package.

I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a return of double her security deposit and pet damage deposit pursuant to section 38 of the *Act*?
- Is the Tenant entitled to recover the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The Landlord advised that his evidence package was served to the Tenant by registered mail on June 6, 2018 and the Tenant confirmed receipt of this package. The Landlord's evidence did not meet the service requirements of Rule 3.15 of the Rules of Procedure; however, the Tenant stated that she could respond to the Landlord's evidence. As such, I accepted and considered this late evidence and continued with the proceeding.

The Landlord stated that the tenancy started on April 1, 2017 as a fixed term tenancy for one year and could continue as a month to month tenancy afterwards. Rent was established at \$1,395.00 per month, due on the first day of each month. A security deposit and a pet damage deposit, each in the amount of \$697.50, was paid. The Tenant confirmed these details.

The Tenant submitted that she provided a forwarding address in writing to the Landlord via registered mail (the Registered mail tracking number is on the first page of this decision) on April 3, 2018. When the Landlord was questioned about whether he received this package, he stated "I believe so."

The Landlord submitted that he was not able to conduct a move in or move out inspection report because the Tenant had aggressive dogs; however, the Tenant refuted this. The Landlord also stated that he did not provide the Tenant with opportunities to conduct a move in or move out inspection report. The Landlord made several references to his claims for compensation due to the condition that the Tenant left the premises in at the end of the tenancy, for repairs and damage to the rental unit, and for outstanding utilities. The Landlord stated that he did not make an Application for Dispute Resolution for these issues as he communicated with the Tenant in the hopes that this could be resolved amicably and because the assessment of the damages and cleaning took quite a bit of time. He submitted that he did not have the Tenant's written consent to keep any portion of the deposit.

Analysis

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with

section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to section 38(6) of the Act.

The registered mail tracking number provided by the Tenant indicated that the package was delivered to the Landlord on April 6, 2018. Therefore, I am satisfied that the Landlord received the Tenant's forwarding address in writing on April 6, 2018 and that the forwarding address has been sufficiently served for the purposes of the Act, pursuant to section 71. As the Tenant vacated the rental unit on March 30, 2018, I find that April 6, 2018 is the date which initiated the 15-day time limit for the Landlord to deal with the deposits. The undisputed evidence before me is that the Landlord did not return the security deposit or pet damage deposit in full within 15 days of April 6, 2018 or make an application to claim against the deposits.

Policy Guideline 17 is of relevance to the consideration of this Application and states:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

Therefore, I find the Landlord breached section 38 of the Act. Under this section, the Tenant is entitled to double the original deposits paid. As such, I grant the Tenant a Monetary Order in the amount of **\$2,790.00** in full satisfaction of this claim.

With respect to the Landlord's references to his claims for compensation due to cleaning, repairs and damage to the rental unit, and for outstanding utilities, these issues were not considered in the Application before me as the Landlord did not make

his own Application to have these claims heard. As such, these claims remain open for the Landlord to file against the Tenant if he chooses to do so.

As the Tenant was successful in her application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$2,890.00** 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 25, 2018

Residential Tenancy Branch