



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance I confirmed service. The landlord confirmed receipt of the tenant's application for dispute resolution and evidence. The tenant confirmed receipt of the landlord's materials. Based on the undisputed evidence I find that the parties were served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover the filing fee for the application from the landlord?

Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in September, 2017. The monthly rent was \$1,100.00 payable on the first of each month along with \$20.00 for utilities. A security deposit of \$500.00 was paid by the tenant at the start of the tenancy and is still held by the landlord. No written tenancy agreement was prepared for this tenancy. No condition inspection report was prepared at either the start or the end of the tenancy.

The tenant testified that they gave written notice to the landlord on September 28, 2017 and moved out before November 1, 2017. The tenant did not give written authorization that the landlord may retain any portion of the security deposit for this tenancy. The tenant provided a forwarding address by a letter dated November 6, 2017. As of the date of the hearing the landlord has not yet returned the security deposit.

The landlord gave evidence that the tenant provided their written notice bundled with their rent payment and therefore they did not notice until sometime in October, 2017. The landlord said that the tenant did not vacate the rental unit on November 1, 2017 and therefore the full rent for November remains due and owing.

Analysis

Pursuant to section 45 of the *Act* a tenant may end a periodic tenancy by giving the landlord notice which complies with the form and content requirement of section 52, on a date not earlier than one month after the landlord receives the notice.

Section 88 of the *Act* provides that documents, including a notice to end tenancy, may be served by leaving a copy with the person.

I accept the undisputed evidence that the tenant provided the landlord with written notice to end the tenancy on September 28, 2017. That the tenant also provided rent at the same time may have caused some confusion, however I find that does not invalidate the notice provided.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the evidence of the parties that this tenancy ended by November 1, 2017 and the tenant gave the landlord the forwarding address in writing on November 6, 2017. The landlord did not return the security deposit to the tenant nor did they file an application for dispute resolution for authorization to retain the deposit within the 15 days provided under the *Act*.

Even if the landlord felt that there was a rental arrears which would entitle them to retain the security deposit the landlord is required to file an application in order to retain the amount. A landlord may not unilaterally decide to keep a security deposit without taking the appropriate steps pursuant to the *Act*. A landlord is in the business of taking money for renting accommodations and they must operate in accordance with the *Act*.

I find that the landlord did not return the security deposit, file for authorization to retain the deposit nor did they have written authorization from the tenant that they may retain the deposit. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$1,000.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

As the tenant was successful in their application the tenant is entitled to recover the \$100.00 filing fee.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1,100.00 against the landlord. The tenant is provided with a Monetary 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: July 5, 2018

Residential Tenancy Branch