



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, PSF, LRE, MNSD

Introduction

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

- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62;
- An order restricting the landlord's right to enter the rental unit pursuant to section 70;
- An order that the landlord provide services or facilities pursuant to section 65; and
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38.

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.

Initially, I was scheduled to hear only the tenants' first application seeking an order that the landlord comply with the Act, provide services and be restricted from entering the rental unit. The tenant's application seeking a return of the security deposit was scheduled to be heard September 17, 2018. Both parties requested that I bring the matters together so that all issues could be heard together. The landlord testified that they had received both of the tenants' applications for dispute resolution and evidence and were prepared to proceed. Pursuant to 2.10 of the Rules of Procedure, as I find that both applications pertain to the same residential property, involve the same parties, and similar evidentiary matters would be considered for each application I ordered that the matters be brought together and heard at once.

At the outset of the hearing the tenants testified that they had moved out and withdrew the portions of their application seeking to set conditions on the landlord's right to enter the rental unit, that the landlord provide services or facilities, and that the landlord comply with the Act, regulations or tenancy agreement.

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 evidence. 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

Are the tenants entitled to a return of all or a portion of the security deposit as claimed?

Background and Evidence

The parties agreed on the following facts. This tenancy ended when the tenant moved out on June 9, 2018. The monthly rent was \$1,400.00 payable on the first of each month. A security deposit of \$650.00 was paid at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at either the start or the end of the tenancy. The tenant provided their forwarding address when moving out on June 9, 2018.

The landlord submits that the tenant did not provide sufficient notice to end the tenancy as they gave written notice on May 26, 2018 and only paid a pro-rated rent for the period of June 1 to June 9 of \$419.94. The landlord testified that they are retaining the security deposit for the remaining June rent arrear.

The tenant submits that based on earlier correspondence and conversations with the landlord, they were permitted to end the tenancy without the notice requirements of the *Act*. The tenant testified that they have not provided written authorization that the landlord may retain any portion of the security deposit for this tenancy.

Both parties submitted into written evidence the various letters, texts and email correspondence that were issued by the parties.

Analysis

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 on June 9, 2018 when the tenant vacated the unit and provided a forwarding address to the landlord. 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 arrear 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 \$1,300.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$1,300.00 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 06, 2018

Residential Tenancy Branch