



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On June 18, 2018, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenant and the Landlord attended the hearing. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package, including her evidence, to the Landlord by registered mail on June 20, 2018 and a receipt was provided to confirm service (the registered mail tracking number is provided on the first page of this decision). The Landlord confirmed that he received this package. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Landlord was served the Notice of Hearing package and evidence.

The Landlord advised that he emailed his evidence to the Tenant “he thinks within the last three days” and the Tenant confirmed that she received this evidence; however, she stated that she did not have adequate time to review these documents or prepare a response. As this evidence was not served in compliance with Rule 3.15 of the Rules of procedure or in a manner that is acceptable pursuant to Section 88 of the *Act*, I have excluded this evidence and will not consider it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. 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 the security deposit?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

All parties agreed that the most current tenancy started on September 1, 2017 as an unwritten tenancy agreement. Both parties agreed that this was a co-tenancy where the Tenant moved with her co-tenant from the downstairs rental unit that they were previously renting, to the upstairs rental unit. The tenancy ended when the Tenant gave written notice and eventually vacated the premises on May 31, 2018. Both parties agreed that rent was established at \$1,950.00 per month, due on the first day of each month. Both parties agreed that the security deposit of \$615.00 and the pet damage deposit of \$615.00 were transferred from the previous tenancy when the co-tenants moved upstairs, and then it was agreed that an additional \$300.00 was paid for a security deposit.

The Landlord stated that he gave the co-tenants a blank move-in inspection report on August 30 or 31, 2018 for them to fill out, with the expectation that this be completed by themselves. However, a move-in inspection report was never completed. The Tenant stated that she was present for a move-out inspection report; however, the Landlord's wife who was present for the inspection was not comfortable signing the report. The Tenant advised that she provided her forwarding address in writing by hand to the Landlord's wife on May 31, 2018 and the Landlord confirmed that he received this address.

The Landlord advised that he did not return the deposit in full or make an Application to keep the deposit within 15 days of receiving the forwarding address in writing as there was a dispute over damage and cleaning and utilities owing. He stated that he electronically transferred \$501.07 to the co-tenant approximately a week before this hearing and the co-tenant accepted this electronic transfer. He advised that he did not have written consent to keep any portion of the deposit.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit or a pet damage deposit is extinguished if the Landlord does not complete the condition inspection reports. As the undisputed evidence is that the Landlord neglected to complete a move-in or move-out inspection report, I find that the Landlord has extinguished his right to claim against the security deposit or pet damage deposit.

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 deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the undisputed evidence before me, I am satisfied that the Landlord had the Tenant's forwarding address in writing when it was handed to the Landlord's wife on May 31, 2018. As the tenancy ended on May 31, 2018, I find that this 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 extinguished his right to claim against the deposits. Furthermore, there is no provision in the *Act* which allows the Landlord to retain a portion of the deposits without authority under the *Act* or having the Tenant's written consent.

As the Landlord did not return the security deposit or pet damage deposit in full within 15 days of May 31, 2018, in essence illegally withholding the deposits contrary to the *Act*, I am satisfied that the Landlord breached the requirements of Section 38. As such, I find that the Tenant has established a claim for a monetary award amounting to double the original security deposit and pet damage deposit. While there was some dispute over the amount of the deposits collected, I find that the email from the Landlord dated June 15, 2018 confirms that an additional \$300.00 was collected as a security deposit. Therefore, I am satisfied that the total security deposit collected was \$915.00 and the

pet damage deposit was \$615.00. Therefore, under the provisions of the *Act*, I grant the Tenant a monetary award in the amount of \$1,830.00 for doubling of the security deposit and \$1,230.00 for doubling of the pet damage deposit. However, as the Landlord returned \$501.07 to the co-tenant already, I am reducing the monetary award for the security deposit accordingly. As such, I grant the Tenant a total Monetary Order in the amount of **\$2,558.93**.

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

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Item	Amount
Double the security deposit	\$1,830.00
Double the pet damage deposit	\$1,230.00
Less amount returned already	-\$501.07
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$2,658.93

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$2,658.93** 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: October 12, 2018

Residential Tenancy Branch