



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed on March 14, 2018 wherein the Tenant sought return of double the security deposit paid and recovery of the filing fee.

Only the Tenant's Advocate called into the hearing. He gave affirmed testimony and was provided the opportunity to present the Tenant's evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 1:55 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant's Advocate and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenant's hearing package. The Tenant's Advocate testified that the Tenant personally served the Landlord with the Notice of Hearing and the Application on March 19, 2018. I accept the Advocate's testimony and find the Landlord was duly served as of March 19, 2018; as such, I proceeded with the hearing in the Landlord's absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The Tenant's Advocate confirmed that the Tenant was granted a fee waiver such that recovery of the filing fee was not required.

Issue to be Decided

1. Is the Tenant entitled to return of double the security deposit paid?

Background and Evidence

Introduced in evidence was a copy of the "Shelter Information" confirming that this tenancy began October 1, 2017. Monthly rent was payable in the amount of \$500.00 and the Tenant paid a \$250.00 security deposit on September 28, 2018.

On February 15, 2018 the Tenant provided the Landlord with his forwarding address in writing. A copy of that letter was provided in evidence before me. The Tenant's Advocate confirmed that the Tenant used the Advocate's address as his forwarding address as he was homeless at the time.

The Tenant's Advocate confirmed that the Landlord did not return the security deposit, nor did he make an application for its retention.

Analysis

The Tenant applies for return of his security deposit pursuant to section 38 of the *Residential Tenancy Act* which provides as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenant's undisputed evidence that they did not agree to the Landlord retaining any portion of their security deposit.

I find that the Landlord received the Tenant's forwarding address in writing on February 15, 2018.

The Landlord failed to apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required under section 38(1) of the *Act*.

The security deposit is held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the Tenant's security deposit through the authority of the *Act*; such as, the written agreement of the Tenant an Order from an Arbitrator. If the Landlord believes they are entitled to monetary compensation from the Tenant they must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenants' security deposit.

Having made the above findings, I Order, pursuant to sections 38 and 67 of the *Act*, that the Landlord pay the Tenants the sum of **\$500.00**, comprised of double the security deposit (2 x \$250.00).

Conclusion

The Tenant is granted a formal Monetary Order in the amount of **\$500.00**. The Tenant must serve the Landlord with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the 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 05, 2018

Residential Tenancy Branch