



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenant requesting return of the security deposit.

The Tenant’s appointed agent and the Landlord appeared for the scheduled hearing. The Landlord was assisted by his advocate, due to hearing and language barriers. The Tenant had expressed concern about serving the dispute notice by registered mail, but the Landlord was present and had filed evidence in response, well in advance of the hearing date. Accordingly, I found that there was no issue about the method of service or the evidence that was submitted by the parties.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, call witnesses and to cross-examine the other party on the relevant evidence provided in this hearing.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

Issue to be Decided

Is the Tenant entitled to a return of the security deposit, pursuant to section 38 of the Residential Tenancy Act (“Act”)?

Background and Evidence

This tenancy began April 1, 2015 and ended December 1, 2017. It was a fixed term tenancy for \$1,000.00 a month, payable on the first of the month. A \$500.00 security deposit was paid and not returned. A copy of the tenancy agreement was submitted into evidence. The Tenant gave notice in writing to terminate the tenancy on November 1, 2017, as requested by the Landlord; she had provided verbal notice in the month of October as well. The Tenant provided her forwarding address in writing to the Landlord on December 25, 2018, and submitted a copy into evidence. She left behind a sofa bed which the caretaker living upstairs had wanted, and a wooden table that belonged to the Landlord. She indicated to the Landlord that she was available to do a move out inspection.

The Tenant spoke with the upstairs tenant/caretaker during the second week of December and says she was told that the suite had been rented by four students from India and that there was some frustration in getting repairs done; there was no statement or witness provided to verify this. Evidence of over 30 telephone calls to the Landlord by the Tenant were submitted, the Tenant stating that the Landlord was evading any communication during the month of December to avoid returning the security deposit or to discuss the condition of the rental unit.

The Landlord states that the Tenant left behind furniture including a bed at the end of the tenancy. He provided evidence to suggest that the rental unit was not left in a state of cleanliness and that it could not be rented out in December as a result of the Tenant's negligence. The Landlord claims that the new renters did not move in for at least a month. He did not return the security deposit and it was confirmed that he did not file a dispute application to retain it. The Landlord states that the Tenant agreed to leave the rental unit clean and that she ought to honour her agreement; however, he was unable to provide evidence that she agreed in writing to have him retain the \$500.00 security deposit at the end of the tenancy. There was no evidence submitted to show that the Landlord had made attempts to schedule a move-out inspection with the Tenant.

Analysis

The Act contains comprehensive provisions on dealing with a tenant's security deposit, reproduced below:

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.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must repay a deposit

(a) in the same way as a document may be served under section 88 (c), (d) or (f) [service of documents],

(b) by giving the deposit personally to the tenant, or

(c) by using any form of electronic

(i) payment to the tenant, or

(ii) transfer of funds to the tenant. (bolding added)

In summary, section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord **must repay** the security deposit or **file an application** to claim against it. Section 38(4) (a) of the Act also provides that a landlord may make a deduction from a security deposit if the tenant consents to this in writing.

I accept the undisputed evidence that this tenancy ended on December 1, 2017 by way of the Tenant's one month written notice. I also accept that the forwarding address was provided in writing by the Tenant to the Landlord on December 25, 2018.

Therefore, the Landlord would have had 15 days from December 25, 2017 onwards, to deal properly with the Tenant's security deposit pursuant to the Act.

There is no evidence before me that the Landlord filed an application within the 15 days of receiving the Tenant's forwarding address or obtained written consent from the Tenant to withhold it. Therefore, I must find the Landlord failed to comply with sections 38(1) and 38(4) (a) of the Act.

Section 38(6) of the Act stipulates that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the deposit. Based on the foregoing, I find the Tenant is entitled to double the return of their security deposit in the amount of \$1,000.00 (\$500.00 X 2). No interest is payable over this period of time.

This order must be served on the Landlord and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Landlord fails to make payment. Copies of this order are attached to the Tenant's copy of this Decision.

The Landlord stated repeatedly that he has legitimate claims against the Tenant that he wanted addressed in the hearing; however, as there is no application for dispute resolution filed on behalf of the Landlord, I make no findings of fact with respect to any potential claims he may have.

Conclusion

The Landlord shall pay forthwith the sum of \$1,000.00 to the Tenant.

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 09, 2018

Residential Tenancy Branch