



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. The landlord was represented by its agent (the "landlord").

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 testimony I find that each party was 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 equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

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

Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in February, 2016 and ended in November, 2017. A security deposit of \$850.00 was paid at the start of the tenancy and is still held by the landlord. The monthly rent was \$1,700.00. In addition the tenant was responsible for paying a portion of the utilities for the rental building which was calculated after the landlord received the bills from the utility company.

The parties testified that there was a condition inspection report prepared at both the start and the end of the tenancy but no copy was submitted into documentary evidence by either party.

The tenant provided their forwarding address to the landlord in a letter dated February 7, 2018. The letter also gives written authorization that the landlord may retain the amount of \$446.78 from the security deposit for this tenancy.

The landlord testified that they disagree with the amount of utility payment that the tenant calculates and says that the actual amount owed is \$490.84. The landlord testified that during the move out inspection the landlord identified several deficiencies in the rental unit caused by the tenant. The landlord said that these deficiencies include the damage to doors and that they incurred costs for repairs. The landlord submits that they are entitled to deduct the cost of repairs from the security deposit.

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 November 30, 2017 and the tenant gave the landlord the forwarding address in writing on February 7, 2018. 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*.

I accept the evidence that the tenant gave written authorization that the landlord may retain \$446.78 from the security deposit paid for this tenancy. I accept the tenant's testimony that they did not agree on any further deductions.

While the landlord claims that the amount owing for utilities is higher and that there was damage to the rental suite I find these submissions to be irrelevant to the matter at hand. The landlord has not filed an application for authorization to recover any cost of repairs from the security deposit. The undisputed evidence of the parties is that the tenant has not authorized the landlord to deduct anything more than the amount of \$446.78

If the landlord had concerns about the condition of the rental unit at the end of the tenancy and sought to recover his losses from the security deposit he ought to have filed an application for dispute resolution in accordance with the *Act*. A landlord cannot simply withhold the security deposit for a tenancy without following the appropriate legislative steps. I find that the landlord has failed to return the security deposit for this tenancy to the tenant without the tenant's authorization or filing an application to claim against the deposit.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit within the required 15 days. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a monetary award in the amount of \$806.44, double the value of the portion of the security deposit owed the tenant for his tenancy. No interest is payable over this period.

$$\$850.00 - \$446.78 = \$403.22 \times 2 = \$806.44$$

As the tenant's application was successful the tenant may also recover the \$100.00 filing fee for this application..

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$906.44 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: October 15, 2018

Residential Tenancy Branch