



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened in response to a review consideration decision rendered, pursuant to section 79 of the *Residential Tenancy Act* (the “Act”), on August 28, 2018, to reconsider a Monetary Order issued to the tenant following a decision issued by the Residential Tenancy Branch (RTB) on July 26, 2018, pursuant to section 67 of the *Act*.

In the original decision of July 26, 2018, the Arbitrator issued a Monetary Order based on the return of double the tenant’s security and pet damage deposit in addition to the recovery of the filing fee for the tenant’s application. The landlord was granted a review hearing as it was determined in the review decision of August 28, 2018 that;

“the applicant for review has submitted sufficient evidence to demonstrate that the original decision may have been obtained by fraud.”

In the decision the Arbitrator noted that the “applicant/Landlord claimed and provided evidence showing that the Tenant submitted a different and potentially falsified rental agreement documents at the time of the hearing. The Landlord has provided another copy of a signed tenancy agreement which is materially different from the one presented by the Tenant at the hearing. The two tenancy agreements differ in the amounts they show for the security and pet deposits, and since this was the central issue at the previous hearing, I find this discrepancy warrants a new hearing.”

The landlord and the tenant attended the review hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord’s assistant attended the hearing to provide support to the landlord.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, only the relevant details of the respective submissions and/or arguments are reproduced here.

The tenant acknowledged receipt of the notice of this review hearing on September 07, 2018. In accordance with section 89 of the Act, I find that the tenant has been duly served with the notice of this review hearing.

The landlord confirmed that they had received some of the tenant's evidence previously from the tenant but requested and received all of it from the RTB. The landlord confirmed that they recently received another evidence package from the tenant on October 03, 2018, by registered mail. In accordance with sections 71 and 88 of the Act, I find that the landlord is duly served with the tenant's evidence.

The tenant confirmed receipt of the landlord's evidence, but that they only received it on October 15, 2018. The tenant stated that the tenancy agreement provided to the RTB, for the review consideration application that resulted in this review hearing, was not provided to the tenant in the landlord's evidence package.

Rule 3.15 of the Residential Tenancy Branch Rules of Procedure (the Rules) states that documentary evidence that is intended to be relied on at the hearing by the respondent must be received by the applicant not less than 7 days before the hearing. I find that the landlord only submitted their evidence to the RTB on October 11, 2018, which was also not in accordance with the Rules.

Based on a balance of probabilities, I accept the tenant's testimony that they received the landlord's evidence on the date testified. I further find that the tenancy agreement that was relied on for the review consideration by the landlord was not submitted to the RTB with the evidence provided on October 11, 2018.

For the above reasons, I find that the landlord did not serve the tenants with their evidence in accordance with the Rules and that the tenant may be prejudiced by this as they did not have a sufficient chance to respond to the landlord's evidence. For this reason the landlord's evidence is not accepted for consideration.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of all or a portion of their security deposit?

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

Background and Evidence

The landlord and tenant agreed that this tenancy began on April 27, 2017, with a monthly rent of \$2,195.00 due on the first day of each month.

The landlord testified that the tenant paid a combined security and pet damage deposit in the amount of \$2,195.00 that the landlord currently retains. The tenant testified that they actually paid a security deposit in the amount of \$2,195.00 and a pet damage deposit in the amount of \$2,195.00 for a total of \$4,390.00.

The tenant provided in evidence;

- A copy of a bank statement showing payments from Co-tenant J.M. in the amount of \$1,097.50 on April 07, 2017, \$3,295.00 on April 13, 2017, and \$2,488.00 on April 27, 2018;
- A copy of an e-transfer record sheet from the investigations unit of the co-tenant's financial institution showing e-transfers to the landlord of \$1,097.50 on April 07, 2017, \$3,295.00 on April 13, 2017, and \$2,488.00 on April 27, 2018,;
- A copy of an e-mail exchange between the landlord and Co-tenant J.M. regarding the rental unit with Co-tenant J.M. stating that they sent ½ a month's rent for security deposit to reserve the rental unit and the landlord confirming they received it and requests the password on April 6, 2017. On April 07, 2018, the landlord lets the co-tenant know that they are to provide May 2017 rent in the amount of \$2,195.00 plus another ½ month's rent for security deposit plus NOT refundable pet damage deposit in the amount of \$2,195.00;
- A copy of an e-mail exchange between the landlord and the tenant on April 13, 2017, regarding the signing of the tenancy agreement and the pet damage deposit being received by the landlord;
- A copy of a tenancy agreement dated April 13, 2017, electronically signed by the landlord, the tenant, Co-tenant J.M. and a third co-tenant using a third-party internet program for securely signing legal documents electronically. The agreement has a commencement date of April 27, 2017, and indicates a security deposit in the \$2,195.00 and a non-refundable security deposit of \$2,195.00; and
- A copy of the electronic history of the tenancy agreement which indicates that it was created by the landlord on April 13, 2017, viewed and signed by all the parties with only viewings of the agreement occurring up to September 06, 2018.

The tenant testified that they moved out of the rental unit and provided their forwarding address to the landlord by mail on April 07, 2018. The tenant submitted that the landlord

did not file an application for dispute resolution or give the tenant her deposits back so she made an Application to recover the deposits.

The tenant referred to the bank statements to confirm that they paid \$1,097.50 for the first half of the \$2,195.00 security deposit on April 07, 2017, as requested by the landlord and that they had sent an additional \$3,295.00 on April 13, 2017, which represented \$2,195.00 for the pet damage deposit plus \$1,100.00 for the other half of the security deposit. The tenant submitted that there is a combined third payment of \$2,488.00 for May 2017 rent and use of the rental unit for a few days from April 27, 2017, to the first of May 2017.

The tenant stated that they were desperate to find a place that would accept pets and that the house was a good size so they felt they had to pay what the landlord was asking for, in addition to not knowing what the rules were for the amount of deposit a landlord may ask for. The tenant stated that her partner at the time was Co-tenant J.M. who has provided the tenant with all of the relevant evidence for the hearing.

The landlord stated that they received the tenant's forwarding address on May 06, 2018, and confirmed that they had not made any application for dispute resolution to keep the security or pet damage deposit. The landlord testified that the security and pet damage deposit was only a combined total of \$2,195.00 and questioned why someone would have paid so much to live in her old house as the tenant is claiming. The landlord submitted that Co-tenant J.M. gave permission for the landlord to keep the security and pet damage deposit in an e-mail.

The landlord confirmed that she created and signed the electronic tenancy agreement but questioned its legality due to not having the address of the rental unit on it. The landlord referred to the tenancy agreement that she had provided which shows the correct amount for the security deposit and which actually has the address of the rental unit on it.

Analysis

Section 38 (4) allows a landlord to retain from a security deposit if, at the end of the tenancy, the tenant agrees in writing the landlord may retain an amount to pay a liability or obligation of the tenant.

If the landlord does not have the tenant's agreement in writing, section 38 (1) of the *Act* stipulates that within 15 days of either the tenancy ending or the date the landlord

receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

Although the landlord indicated that Co-tenant J.M. agreed by e-mail to keep the security deposit, I find that there is no actual written agreement between the landlord and Co-tenant J.M. in evidence agreeing on an amount to be retained by the landlord in writing as required under section 38 (4) of the Act.

I find the landlord confirmed they were duly served with the tenant's forwarding address and I find there is no evidence to show that the landlord had the tenant's agreement in writing or that the landlord applied for dispute resolution within 15 days of the end of the tenancy to retain a portion of the security deposit as required under section 38 (1).

Section 38 (6) of the *Act* stipulates that a landlord who does not comply with section 38 (1) of the *Act* may not make a claim against the security deposit or any pet damage deposit and must pay double the amount of the security deposit, pet damage deposit or both, as applicable. Pursuant to section 38 (6) of the Act, I find that the landlord must pay the tenant double the security deposit.

I find that the only other disputed account of events provided by the landlord and the tenant, besides whether the landlord had agreement to keep the deposits, is regarding the amount of the security and pet damage deposit paid to the landlord. Having reviewed the above evidence and testimony, I find that the tenant has sufficiently proven that a security deposit of \$2,195.00 and a pet damage deposit of \$2,195.00 were paid to the landlord for the tenancy.

I find that the e-mail exchange between the landlord and Co-tenant J.M. clearly shows the landlord requesting the security deposit in two parts for a total amount of \$2,195.00 and a non-refundable pet damage deposit of \$2,195.00. I find that the landlord confirmed that they created the electronic tenancy agreement and the terms contained therein. I find that the electronic history provided does not show any amendments made by any parties from the original one created on April 13, 2017, as of September 06, 2018. I find that the pet damage deposit is listed as non-refundable in the same way that the landlord has referred to it as non-refundable in the e-mail exchange between the landlord and Co-tenant J.M.

Having made the above findings and pursuant to section 67 of the *Act*, I find that the tenant is entitled to a monetary award of \$8,780.00, comprised of double the security

deposit ($2 \times \$2,195.00 = \$4,390.00$) and double the pet damage deposit ($2 \times \$2,195.00 = \$4,390.00$).

As the tenant has been successful in their application, I allow the tenant to recover their filing fee.

The landlord may still file an application for lost revenue and damages; however, the issue of the security deposit has now been conclusively dealt with in this review hearing.

Conclusion

The tenant is successful in the review hearing for their Application.

The previous RTB decision and Monetary Order in the amount of \$8,880.00 issued on July 26, 2018, is confirmed and may be enforced by 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 25, 2018

Residential Tenancy Branch