



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened in response to an application from the tenant pursuant to the *Residential Tenancy Act* (“*Act*”) for:

- authorization to obtain a return of the security or pet deposit, pursuant to section 38 of the *Act*, and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both parties appeared at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord acknowledged receiving the tenant’s application for dispute resolution and evidentiary package. The tenant confirmed receipt of the landlord’s evidentiary package. I find all parties were duly served in accordance with the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a return of the security deposit? If so, should it be doubled?

Can the tenant recover the filing fee?

Background and Evidence

Testimony provided by the tenant explained this tenancy began on January 1, 2017 and ended on January 1, 2018. Rent was \$4,200.00 per month and was lowered to \$4,100.00 over the course of the tenancy. A security deposit of \$2,100.00 paid at the outset of the tenancy continues to be held by the landlord.

The landlord acknowledged receiving the tenant's forwarding address in writing after it was sent to her by way of Canada Post Registered Mail on February 6, 2018. The landlord said she retained the tenant's security deposit because of significant damage to the rental unit and because of cleaning that was required following the tenant's departure.

The tenant said the parties had attempted to perform a condition inspection of the unit on January 31, 2018; however, a dispute between the parties during this inspection led to an abandonment of the process.

Following the tenant's move out, the landlord said she sought several quotes for repairs and cleaning to the unit, and communicated via email with the tenant many times in February 2018 discussing her concerns. The landlord included this information in her evidentiary package. The landlord said she did not apply to retain the tenant's security deposit and hoped the matter would be resolved via the dispute resolution process.

Analysis

Section 38 of the *Act* requires the landlord to either return a tenant's security or pet 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 and upon receipt of the tenant's forwarding address in writing. In this case, the landlord acknowledged receiving the tenant's forwarding address in writing after it was sent to her by Canada Post Registered Mail on February 6, 2018. The landlord therefore had 15 days following receipt of this address to apply for dispute resolution or to return the deposit. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security or pet deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

During the hearing the landlord acknowledged that she did not apply to retain the tenant's security deposit. While I note testimony was provided at the hearing by the landlord that she suffered a loss as a result of damage and cleaning that was required in the unit following the tenant's departure, the landlord had an obligation to apply for dispute resolution related to any damages which may have occurred. No evidence was produced at the hearing that the landlord applied for dispute resolution within 15 days of receiving a copy of the tenant's forwarding in writing. If the landlords had concerns

arising from the tenancy, the landlord should have applied for dispute resolution to retain the security deposit.

Pursuant to section 38 of the *Act* I find I am bound by the *Act* and must order a monetary award of \$4,200.00 in the tenant's favour.

As the tenant was successful in her application, she may recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$4,300.00 against the landlord. This amount includes a return of the security deposit with the penalty provision of section 38 included and a return of the filing fee. 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 30, 2018

Residential Tenancy Branch