



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:

- return of the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee for this application pursuant to section 72 of the *Act*.

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. Tenant I.M. attended and spoke on behalf of both tenants.

As both parties were present, service of documents was confirmed. The tenant testified that the landlord was served with the application for dispute resolution and evidence by Canada Post registered mail on August 1, 2018, which was confirmed by the landlord. The landlord testified that she served the tenant with evidence by Canada Post registered mail on September 6, 2018, which was confirmed by the tenant. Therefore, I find that all the hearing documents for this matter were served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to the return of all or a portion of the security deposit? And if so, is the tenant entitled to any statutory compensation as a result of the landlord's failure to comply with the security deposit requirements of the *Act*?

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

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The full written tenancy agreement was not submitted into documentary evidence, however, both parties agreed to the following information about the tenancy agreement:

- This month-to-month tenancy began on November 1, 2017 and ended on June 30, 2018 when the tenants returned vacant possession of the rental unit to the landlord.
- At the beginning of the tenancy, the tenants paid the landlord a security deposit of \$450.00 and a pet damage deposit of \$450.00.
- A condition inspection walk-through of the rental unit was completed by the landlord and tenant at the beginning of the tenancy, but the landlord did not provide a written report of this inspection to the tenant.
- Upon move-out, a condition inspection walk-through of the rental unit was completed by the landlord and the tenant, however, the tenant did not agree to sign the condition inspection report nor did he agree to receive a written copy of the inspection report offered by the landlord. The tenant requested the report to be sent via email. The tenant did acknowledge taking a picture of the first page of the report after the walk-through.
- The tenants provided their forwarding address to the landlord via email and by Canada Post regular mail, which was confirmed received by the landlord by July 4, 2018.

The tenant confirmed receiving a cheque from the landlord in the amount of \$203.81 as partial payment of the security and pet damage deposits.

Both parties confirmed that the tenant never provided the landlord with written authorization to deduct any amount from the security or pet damage deposits.

The landlord confirmed that she was not granted a monetary order through a prior arbitration hearing to retain any portion of the tenants' security or pet damage deposits.

The landlord submitted photographic evidence pertaining to damages and cleaning deficiencies discovered at the end of the tenancy. The landlord testified that she retained a portion of the security and pet damage deposits in satisfaction of these costs.

The landlord confirmed that she did not file an application for dispute resolution to retain any portion of the security and pet damage deposits. The landlord acknowledged that she is a new landlord and was not aware of the requirements for addressing security and pet damage deposits at the end of the tenancy.

I explained to the parties that the only matter before me for decision at this hearing was to make a determination on the tenants' application for the return of the security and pet damage deposits, and that any testimony in relation to the alleged damages and cleaning deficiencies was not relevant for making a determination in this matter. I informed both parties that they were both at liberty to make claims for damages in relation to the tenancy in accordance with the time limits provided by the *Act*.

I further explained that the *Act* contains statutory provisions which can require that in certain circumstances a landlord must repay a tenant double the security deposit. If a tenant is entitled to doubling of the deposit, I must award the tenant double the deposit unless the tenant expressly waives entitlement. Accordingly, I have considered whether the tenant is entitled to the doubling provision in making this decision.

Analysis

The *Act* contains comprehensive provisions on dealing with security deposits. Under section 38 of the *Act*, the landlord is required to handle the security deposit as follows:

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.

...

(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.

...

(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.

At no time does the landlord have the ability to simply keep all or a portion of the security deposit because they feel they are entitled to it due to damages caused by the tenant. If the landlord and the tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

In this matter, the tenancy ended on June 30, 2018, and the landlord received the tenants forwarding address on July 4, 2018. Therefore, the landlord had 15 days from July 4, 2018, which is the later date, to address the security and pet damage deposits in accordance with the *Act*.

The landlord confirmed that she had not applied for arbitration within 15 days of the end of the tenancy or receipt of the forwarding address of the tenants, to retain a portion of the security and pet damage deposits, as required under section 38 of the *Act*.

It was confirmed by both parties that the tenants did not provide the landlord with any authorization, in writing, for the landlord to retain any portion of the security and pet damage deposits.

I further note that the landlord extinguished the right to claim against the security and pet damage deposits by failing to provide a written condition inspection report at the beginning of the tenancy. This extinguishment is explained in section 24(2) as follows:

- 24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 23 (3) [*2 opportunities for inspection*]
 - (b) having complied with section 23 (3), does not participate on either occasion, or
 - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The landlord may only keep all or a portion of the security and pet damage deposit through the authority of the *Act*, such as an order from an Arbitrator, or with the written agreement of the tenant. In this matter, I find that the landlord did not have any authority under the *Act* to keep any portion of the security deposit.

I note that the landlord provided verbal testimony and documentary evidence about the issue of damages and cleaning deficiencies left by the tenants; however, the landlord is unable to make a monetary claim through the tenants' Application.

The landlord may still file their own Application for compensation for the alleged damages and cleaning deficiencies caused by the tenants; however, the issue of the security and pet damage deposits has now been conclusively dealt with in this hearing.

Based on the above legislative provisions and the testimony and evidence of both parties, on a balance of probabilities, I find that the landlord failed to address the security deposit in compliance with the *Act*. As such, in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to a monetary award equivalent to the value of double the amount of the security deposit withheld by the landlord, less the amount of the security deposit already returned to the tenants, with any interest calculated on the original amount only. No interest is payable for this period.

I find that the amount of compensation owed to the tenants is calculated as follows:

Original security and pet damage deposits paid by tenants = \$900.00

Doubling provision applied pursuant to section 38(6) of the *Act* = \$1,800.00

Amount of security and pet damage deposit returned by landlord = \$203.81

Amount of monetary award owed to tenant = \$1,800.00 - \$203.81 = \$1,596.19

Therefore, the tenants are entitled to a monetary award of \$1,596.19 as compensation for the landlord's failure to address the security and pet damage deposits in accordance with section 38 of the *Act*.

Having been successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application.

Having made the above findings, I order that the landlord pay the tenants the sum of **\$1,696.19** in full satisfaction of the security and pet damage deposits and recovery of the filing fee paid by the tenants for this application.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$1,696.19 pursuant to sections 38, 67 and 72 of the *Act*.

The tenants are provided with this 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: September 20, 2018

Residential Tenancy Branch