



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On June 18, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to request the return of his security deposit, and to recover the cost of the filing fee. The matter was set for a conference call.

Both the Tenant and Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenant and the Landlord testified that they received each others documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Has there been a breach of Section 38 of the *Act* by the Landlord?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The testimony of both parties was that the tenancy began on December 1, 2002. Neither party could remember the exact amount of rent that was due. However, both parties agreed that it was around \$1,400.00 per month. The parties agreed that the Tenant paid a \$595.00 security deposit (the deposit) at the outset of this tenancy.

The parties also agreed that the tenancy ended, on May 10, 2018, in accordance with a Two-Month Notice to End Tenancy for Landlord Use of the Property issued by the Landlord.

The Tenant testified that neither the move-in or move-out inspection was formally completed during this tenancy. The Tenant testified that a verbal walkthrough had been done, but no written document was created. The Tenant testified that during the walk through the Landlord's agent had not indicated that there were any problems with the condition of the rental unit when it was returned. The Tenant also testified that at no time had he give the Landlord written or verbal permission to keep his deposit.

The Landlord testified he had had been unable to attend the rental unit to conduct the move-out walk through with the Tenant, so he had someone attend for him. The Landlord testified that he had retained the Tenant's deposit due required painting to the rental unit not being completed. The Landlord testified that in 2002, he had agreed to allow the Tenant to paint the rental unit on the condition that the Tenant would return the rental unit to the original colour when he moved out. The Landlord testified that he and the Tenant agree to this term in a written letter. The Landlord provided a copy of the letter into documentary evidence.

When asked the Landlord testified that he had not painted the rental unit at any point during the Tenant's 16-year tenancy. The Landlord also testified that he had not gotten written permission from the Tenant to keep the security deposit nor had he filed for dispute resolution with this office to make a claim against the deposit.

Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposit or repay the security deposit to the tenant.

Return of security deposit and pet damage deposit

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.

I find that this tenancy ended, in accordance with the *Act*, on May 10, 2018, the date the tenant moved out and that the Landlord's agent and the Tenant conducted a walk-through inspection of the rental unit. I find that the Landlord was in receipt of the Tenant's forwarding address on May 31, 2018. Accordingly, I find that the Landlord had until June 15, 2018, to comply with section 38(1) of the *Act* by either repaying the deposit in full to the Tenant or submitting an Application for Dispute resolution to claim against the deposit. The Landlord, in this case, did neither.

At no time does a landlord have the right to simply keep any portion of the security deposit because they feel they are entitled to it or are justified to keep it. If the landlord and the tenant are unable to agree to the repayment of the security deposit or that deductions be made, 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. It is not enough that the landlord thinks they are entitled to keep even a small portion of the deposit, based on unproven claims.

I find that the Landlord breached section 38(1) of the *Act* by not returning the Tenant's full security deposit or filing a claim against the deposit within the statutory timeline.

Section 38(6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

- 38 (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.

Therefore, I find that pursuant to section 38 of the *Act* the Tenant has successfully proven his entitled to the return of double the security deposit. I award the Tenant \$1,190.00, for the return of double the security deposit.

As the Tenant has been successful in this application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I find that the Landlord has breached section 38 of the *Act*, as he failed to repay the full security deposit or make a claim against the security deposit as required by the *Act*.

I find for the Tenant pursuant to sections 38 and 72 of the *Act*. I grant the Tenant a Monetary Order in the amount of \$1,290.00. The Tenant is 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 28, 2018

Residential Tenancy Branch