



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:

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

The tenant testified that the landlord was served the notice of dispute resolution package by registered mail on or around June 13, 2018. The landlord confirmed receipt of the dispute resolution package via registered mail but did not know on what date. I find that the landlord was served with the notice of dispute resolution package in accordance with section 89 of the *Act*.

Issue(s) to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 1, 2017 and ended on May 1, 2018. Monthly rent in the amount of \$500.00 was payable on the first day of each month. A security deposit of \$250.00 and a pet damage deposit of \$250.00 were paid by the tenant to the landlord.

Both parties agree that on May 2, 2018 the tenant personally served the landlord with her forwarding address in writing and requested the return of her security deposit and pet damage deposit. Both parties agree that the landlord has not returned either the pet damage deposit or the security deposit to the tenant.

Both parties agree to the following facts. The landlord rents the entire house from a different landlord. The house has three levels: the landlord lives in the top two levels and the tenant rents the bottom floor from the landlord. The bottom floor is a self-contained suite; the tenant and the landlord do not share a kitchen or a bathroom. The landlord and the tenant share laundry facilities.

The landlord argued that the *Act* does not apply to the relationship between the parties because the tenant and the landlord are room-mates.

The landlord testified that she did not return the tenant's deposits because there was a noticeable smell of cat urine in the rental suite. The tenant denies that the rental suite smelt like urine.

Analysis

Residential Tenancy Policy Guideline 19 ("PG 19") states that when a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant. The original tenant

remains the tenant of the original landlord, and, upon moving out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the “landlord” of the sub-tenant.

PG 19 goes on to say that if the original tenant transfers their rights to a subtenant under a sublease agreement and vacates the rental unit, a landlord/tenant relationship is created and the provisions of the Act apply to the parties.

In this case, I find that the parties to this dispute entered into a sub-lease agreement. The landlord (the original tenant), transferred her rights in regard to the bottom floor of the house, to the tenant. The landlord gave the tenant the right of exclusive occupation of the bottom floor suite. I find that this transfer of rights created a landlord tenant relationship between the parties to this dispute and that the provisions of the *Act* apply to the parties.

I find that the tenant and the landlord were not room-mates because the tenant had exclusive occupation of her suite and did not share a bathroom or a kitchen with the landlord. Shared laundry services do not make the parties room-mates.

Section 38 of the Act requires the landlord to either return the tenant’s security deposit and pet damage deposit or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenant’s provision of a forwarding address in writing. 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 deposit and pet damage deposit.

However, this provision does not apply if the landlord has obtained the tenants’ written authorization to retain all or a portion of the security deposit and pet damage deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the testimony of both parties. The tenancy ended on May 1, 2018. The tenant personally served the landlord with her forwarding address in writing on May 2, 2018, in accordance with section 88 of the *Act*. The landlord did not return the security deposit or make an application for dispute resolution to claim against it.

Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit or pet damage deposit. In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to receive \$1,000.00, which is double the security deposit and pet damage deposit. Although the tenant did not apply to obtain a return of double the deposit, she did not specifically waive her right to it. Accordingly, I must consider the doubling provision as per Residential Tenancy Policy Guideline 17.

As the tenant was wholly successful in this application, I find that she is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$1,100.00.

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 5, 2018

Residential Tenancy Branch