



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

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 double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served the landlord in person with the notice of hearing package in person. The tenant stated that two documents (a telephone log and a letter from her sister) were uploaded, but not served to the landlord. Both parties confirmed that the landlord served the tenant with the uploaded evidence and served to the tenant via Canada Post Registered Mail on March 23, 2018 and has provided the Canada Post Customer Receipt Tracking number as confirmation of service. A copy was provided in the landlord's documentary evidence.

I accept the affirmed testimony of both parties and find that the landlord was sufficiently served with the notice of hearing package as per section 89 of the Act. No record of the tenant's uploaded evidence was found, but in any event was not served to the landlord. The tenant was advised that she could refer to this evidence during the hearing if it became relevant. I also accept the undisputed affirmed testimony of both parties and find that the landlord has properly served the tenant with the notice of hearing package via Canada Post Registered Mail on March 23, 2018.

During the hearing it was clarified with both parties that although the tenant applied for a monetary claim of \$1,175.00, it was for return of double the security and pet damage deposits combined at \$1,175.00 and recovery of the \$100.00 filing fee.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on April 1, 2017 on a fixed term tenancy ending on March 31, 2018 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated March 31, 2017. The monthly rent was \$1,175.00 payable on the 1st day of each month. A security deposit of \$587.50 was paid on February 27, 2017 and a pet damage deposit of \$587.50 was later paid.

The tenant seeks a clarified monetary claim of \$2,450.00 for return of double the security and pet damage deposits and recovery of the filing fee (\$1,175.00 (\$587.50X2) X 2) +\$100.00).

Both parties agreed that the tenancy ended on January 31, 2018 and that the tenant provided her forwarding address in writing for the return of the security deposit. The tenant claims it was provided on January 31, 2018, but the landlord claims that it was provided on February 1, 2018 during the condition inspection report for the move-out. The landlord claimed that the tenant provided permission to keep all or part of the security and pet damage deposits in the completed condition inspection report.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a 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 subsection 38(6) of the Act equivalent to the value of the security and/or pet damage deposit(s).

I accept the affirmed testimony of both parties and find that the tenancy ended on February 1, 2018 as per the completed condition inspection report for the move-out completed on February 1, 2018. I also accept the undisputed affirmed testimony of both parties that the tenant provided her forwarding address in writing to the landlord as per the completed condition inspection report dated February 1, 2018.

A review of the condition inspection report for the move-out dated February 1, 2018 section 1, End of Tenancy clearly shows that the tenant signed and agreed that the report represents the condition of the rental unit as indicated in section z (1). The landlord claims that section 2 was

noted that the tenant agreed to the landlord retaining the security and pet damage deposits by signing the portion below for the move-out, in section 4. I find in this situation that the landlord is mistaken in interpreting the signature of the move-out report as a sign of agreeing to a deduction from the security deposit noted. It is clear that section z (2) is distinctly separate from section z (4) as there is a place to put the tenant's name, what deduction is agreed upon, the date of agreement and a separate line for the tenant's signature for agreement. On this basis, I find that there was no permission given by the tenant for the landlord to retain the security or pet damage deposits and the tenant's signature represents an agreement to the condition of the move-out.

The tenant has established a claim for return of the combined \$1,175.00 security and pet damage deposits. I also find that as the landlord failed to comply with section 38 (1) of the Act that the landlord is liable under section 38(6) to an amount equal to the combined security and pet damage deposits of \$1,175.00.

The tenant has established a claim for \$2,350.00.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$2,450.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the 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 02, 2018

Residential Tenancy Branch