



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On June 27, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to request the return of her 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 August 1, 2016, and that rent in the amount of 1,200.00 was due by the first day of each month. The parties agreed that the Tenant paid a \$1,100.00 security and pet damage deposits (the deposit) at the outset of this tenancy. Both parties agreed that the tenancy agreement for this tenancy had not been signed by the Tenant. The parties also agreed that the move-in Inspection had not been formally completed for this tenancy. The Landlord submitted a

copy of an unsigned tenancy agreement and move-in/move-out inspection report into documentary evidence.

The parties could not agree on the end date of this tenancy. The Tenant testified that she moved out of the rental unit as of September 1, 2018. The Landlord testified that the Tenant did not move out until September 4, 2018.

The Tenant testified that neither the move-in or move-out inspection had been formally completed during her tenancy. The Tenant also testified that at no time had she give the Landlord written or verbal permission to keep her deposit. The Tenant testified that she had made several attempts to schedule the move-out inspection with the Landlord by text message but that the Landlord kept cancelling. The Tenant provided 44 pages of text message history and 14 pages of email strings between her and the Landlord into documentary evidence.

The Tenant also testified that she had provided the Landlord with her forwarding address in writing, on September 14, 2018, by posting it to the front door of the Landlord's home. Both the Tenant and the Landlord provided a copy of an email string that the Tenant had sent to the Landlord regarding the return of her security deposit, into documentary evidence. The Tenant also submitted a copy of the letter she had served the Landlord with her forward address into documentary evidence.

The Landlord testified he had not returned or claimed against the deposits as the Tenant did not attend his final attempt to schedule the move-out inspection and that he had never received the Tenant written forwarding address. The Landlord testified he had made several attempts to schedule the move-out inspection with the Tenant. The Landlord provided 6 pages of text message history and 15 pages of email strings between himself and the Tenant into documentary evidence.

The Landlord also testified that he served the Notice of Final Opportunity to Schedule a Condition Inspection (the Notice) to the Tenant by posting it to the door of the rental unit on September 5, 2018. The Landlord provided a copy of the written Notice and two pictures of the Notice posted to the door of the rental unit into documentary evidence.

Analysis

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

I accept the verbal testimony of the Landlord, and I find that this tenancy ended on September 4, 2017, the date the Landlord testified that the Tenant had moved out of the rental unit.

I have reviewed the testimony and the documentary evidence submitted by both parties. I find that the Tenant did make herself available on several dates to conduct the move-out inspection with the Landlord. However, I note that the Landlord had cancelled that on the arranged day for the inspection.

Additionally, I noted that the Notice of Final Opportunity to Schedule a Condition Inspection had been posted to the front door of the rental unit, on September 5, 2018, the day after the Landlord testified that the Tenant had move-out. I find that it was unreasonable for the Landlord to expect that the Tenant would receive a Notice posted to the door of a property that he knew, she no longer had possession of. I find that the Landlord was in breach of section 35 of the *Act* when he did not ensure that the move out inspection was completed in accordance with the *Act*.

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 accept the documentary evidence of the Tenant, and I find that she served the Landlord with a letter containing her forwarded, on September 15, 2018. Pursuant to section 90 of the *Act*, I find that the Landlord was in receipt of the Tenant's forwarding address on September 18, 2017, three days after it had been posted to his front door.

Accordingly, I find that the Landlord had until October 3, 2017, 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 her entitled to the return of double the security deposit. I award the Tenant \$2,200.00, 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 **\$2,300.00**. 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: November 6, 2018

Residential Tenancy Branch