



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

The landlords and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. Landlord N.B. (the landlord) indicated that he would be the primary speaker for the landlords.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, only the relevant details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) and evidentiary package which was received by the landlord on April 14, 2018. In accordance with sections 88 and 89 of the *Act*, I find that the landlord has been duly served with the Application and evidentiary package.

The tenant acknowledged receipt of the landlord's evidence on April 14, 2018. In accordance with section 88 of the *Act*, I find that the tenant has been duly served with the landlords' evidence.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of all or a portion of their security deposit?

Background and Evidence

The tenant gave written evidence that this tenancy began on January 10, 2018, with a monthly rent in the amount of \$900.00, due on the 10th day of each month. The landlord confirmed that a security deposit in the amount of \$500.00 was paid. The landlord stated the initial rent for the unit was \$1,000.00, which was reduced to \$900.00.

The landlord submitted in evidence:

- Various photographs of damage to the rental unit;
- A reference letter from a previous tenant;
- Copies e-mail correspondence between the landlord and the tenant; and
- A copy of a letter to the Residential Tenancy Branch with a timeline of events, the landlords efforts to clean the rental unit upon vacancy and a description of the expenses incurred by the landlord.

The tenant stated that she gave her forwarding address to the landlord which was on the Application, on April 14, 2018.

The landlord confirmed that they received the tenant's forwarding address on April 14, 2018, and that they did not make an Application for Dispute Resolution to retain the security deposit or that they had the tenant's permission in writing to keep the security deposit. The landlord submitted that they attempted to return a portion of the security deposit to the tenant but that the tenant did not accept it.

Analysis

Having reviewed the documentary evidence and testimony, I find that the landlord was served with the tenant's forwarding address on the Application, which I have found was duly served to the landlord on April 14, 2018

Section 38 (4) allows a landlord to retain from a security deposit if, at the end of the tenancy, the tenant agrees in writing the landlord may retain an amount to pay a liability or obligation of the tenant. If the landlord does not have the tenants' agreement in writing, section 38 (1) of the *Act* stipulates that within 15 days of either the tenancy ending or the date the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

Since I have found that the landlord was duly served with the tenant's forwarding address on April 14, 2018, I find the landlord was obligated to make an application for dispute resolution, or to obtain the tenant's written consent to keep the security deposit, on or before April 29, 2018, 15 days after receiving the tenant's forwarding address.

I find there is no evidence provided to show that the landlord had the tenant's agreement to keep the security deposit in writing or that the landlord applied for dispute

resolution within 15 days of receiving the tenant's forwarding address to retain a portion of the security deposit as required under section 38 (1). Section 38 (6) of the *Act* stipulates that a landlord who does not comply with section 38 (1) of the *Act* may not make a claim against the security deposit or any pet damage deposit and must pay double the amount of the security deposit, pet damage deposit or both, as applicable.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. Pursuant to sections 38 (6) and 67 of the *Act*, I find that the landlord must pay the tenant double the security deposit as they have not complied with section 38 (1) of the *Act*.

I find that the tenant is entitled to a monetary award of \$1,000.00, which is comprised of double the security deposit (2 x \$500.00) plus applicable interest. There is no interest payable over this period.

The landlord may still file an application for lost revenue and damages; however, the issue of the security deposit has now been conclusively dealt with in this hearing.

Conclusion

Pursuant to section 67 of the *Act*, I grant a Monetary Order in the tenant's favour in the amount of \$1,000.00, which is for double the security deposit. 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 Orders 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 06, 2018

Residential Tenancy Branch