



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for the return of the security deposit.

The Tenant and one of the Landlords were both present for the duration of the teleconference hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package by registered mail, as well as a copy of the Tenant’s evidence. The Tenant confirmed receipt of the Landlord’s evidence package by registered mail. I find that both parties were duly served in accordance with Sections 88 and 89 of the *Act*.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch 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

Is the Tenant entitled to the return of the security deposit?

Is the Tenant entitled to the return of double the security deposit?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on April 1, 2017 and the Tenant moved out on June 30, 2018. Monthly rent was \$1,650.00. A security deposit of \$825.00 was paid at the outset of the tenancy.

The Tenant testified that she participated in a move-out inspection on June 30, 2018, with a property manager for the Landlords. She stated that the process felt rushed, but she signed the report and also provided her forwarding address in writing at this time.

The Condition Inspection Report was submitted into evidence and notes no damage other than stating that the tenant is responsible for damage to the clothes washer. The Tenant did not sign agreeing to any specific amount being deducted from her deposit and stated that she does not remember the damage to the washing machine being noted on the report before signing.

The Landlord testified that he could not provide details as to what occurred at the move-out inspection as he was not present. However, he was given a copy of the Condition Inspection Report. He was in agreement that the Tenant had not provided permission in writing for a specific amount to be deducted from the security deposit.

The Landlord submitted an invoice for the repair of the washing machine in the amount of \$486.85. He stated that on July 31, 2018, the Tenant was mailed a cheque for the remainder of her security deposit after deducting the amount for the repair of the washing machine. The Landlord stated that the Tenant did not accept the cheque for the return of the remainder of the deposit and it was sent back to him by mail.

The Tenant testified that the issue with the washing machine was not caused by her or her family. Instead, she stated that it was caused by normal wear and tear through use of the washing machine during the tenancy.

The Landlord testified that the issue was related to the control board of the washing machine which he was informed does not usually fail and instead was likely caused due to being damaged.

The Tenant agreed that she received a cheque for the remainder of the deposit after deducting the cost of the washing machine repair. However, she stated that she did not

accept this as it had been more than 15 days and she believed she was entitled to the entire deposit back.

The Landlord provided testimony that there was a delay in getting the deposit to the Tenant due to an issue with the strata corporation. The strata had issued a fine to the Tenant regarding improper disposal of garbage. However, the Landlord did not believe it was the Tenant and communicated with the strata company regarding whether there was any evidence the disposal issue was with the Tenant.

It took the strata corporation a while to sort the issue out and it was not until July 30, 2018 that they confirmed the fine would be dropped. Therefore, the Landlord stated that he did not need to withhold an additional amount from the security deposit and sent the Tenant a cheque the next day, after deducting the cost of the washing machine repair. The Landlord stated that they did not file an Application for Dispute Resolution for damages against the security deposit.

The Tenant applied for the return of double her security deposit due to not receiving it back within 15 days. She submitted into evidence email exchanges between herself and the Landlord regarding the return of the deposit as well as the issue with the strata corporation.

Analysis

I refer to Section 38(1) of the *Act* which states the following:

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.

The parties agreed that the tenancy ended on June 30, 2018, the same day that the Tenant's forwarding address was provided in writing. As such, I find that the Landlords

had 15 days from this date to return the deposit or file a claim against it. The Landlord stated that they did not file an Application for Dispute Resolution against the security deposit. They sent the Tenant a cheque for the remainder of the deposit on July 31, 2018, which was after the 15 day timeline provided for under the *Act* had passed. Therefore, I find that Section 38(6) applies, and the Tenant is entitled to the return of double the deposit amount.

Regarding any deductions from the deposit, I refer to Section 38(4) of the *Act* which states the following:

- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
 - (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
 - (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

On the Condition Inspection Report dated June 30, 2018, the Tenant signed agreeing that the report fairly represents the condition of the rental unit. However, the Tenant did not agree to any deductions from her security deposit. Whether or not the inspection noted that the washing machine was broken, her signature is agreement that it is broken, not that she has agreed to pay for the repairs, or that a repair amount had been agreed upon.

Therefore, I find that the Landlords were not in compliance with Section 38(4) as they withheld an amount for repairs that the Tenant had not agreed to in writing and did not have permission otherwise under Section 38 to withhold this amount.

Although the Landlord testified as to why the deposit was not paid back within 15 days, Section 38(1) of the *Act* states that there is 15 days to pay the deposit back or file a claim and I have no evidence before me that the Landlord took either of these steps within the 15 day timeline.

Therefore, pursuant to Section 38(6) and Section 67 of the *Act*, I find that the Tenant is entitled to the return of double the security deposit in the amount of \$1,650.00.

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$1,650.00** for the return of double the security deposit. The Tenant is provided with this Order in the above terms and the Landlords must be served with **this Order** as soon as possible. Should the Landlords 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 30, 2018

Residential Tenancy Branch