



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 tenants' 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; and
- authorization to recover the filing fee for this application pursuant to section 72.

The landlord and the tenants attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. The landlord had an assistant to help with translating at the hearing. Tenant Z.P. (the tenant) stated that they would be the primary speaker for the tenants.

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

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) and the tenants' evidence which were served by way of registered mail. In accordance with sections 88 and 89 of the Act, I find that the landlord is duly served with the Application and evidence.

The landlord acknowledged receipt of the tenants' forwarding address which was left in the mailbox on July 31, 2018. I find that the landlord is duly served with tenants' forwarding address on pursuant to section 88 of the Act.

Issue(s) to be Decided

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

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant testified that this tenancy began on July 01, 2017, with a monthly rent in the amount of \$800.00, due on the first day of each month with a security deposit in the amount of \$400.00.

The tenant also provided in evidence:

- A copy of the letter containing the tenant's forwarding address that was provided to the landlord on July 31, 2018;
- A copy of a letter from the landlord to the tenants stating that they are keeping \$147.00 of the \$400.00 security deposit; and
- A copy of a cheque from the landlord to the tenant dated August 08, 2018, for \$253.00

The tenant gave undisputed affirmed testimony that they moved out of the rental unit on July 30, 2018, and that the landlord did not return their full security deposit after the tenant provided the landlord with their forwarding address on July 31, 2018.

The landlord confirmed that they did not make an Application for Dispute Resolution and that they only returned a portion of the tenants' security deposit without obtaining the tenants' written consent to keep any portion of the security deposit.

Analysis

Section 38 (4) allows a landlord to retain from a security deposit if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain an amount to pay a liability or obligation of the tenant.

If the landlord does not have the tenant's agreement in writing to retain a portion of the security deposit, section 38 (1) of the *Act* stipulates that within 15 days of either the tenancy ending or the date that 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 the landlord was duly served with the tenants' forwarding address, I find that the landlord was obligated to obtain the tenant's written consent to keep the

security deposit or to file an Application 15 days after receiving the tenants' forwarding address.

I find that it is undisputed that the landlord did not have the tenant's agreement in writing to keep any portion of the security deposit or that the landlord applied for dispute resolution within 15 days of receiving the tenants' 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 tenants double the security deposit as they have not complied with section 38 (1) of the *Act*.

Therefore, I find that the tenants are entitled to a monetary award of \$547.00, which is comprised of double the security deposit less the amount already returned to the tenants plus applicable interest ($(\$400.00 \times 2 = 800) - \$253.00 = \$547.00$).

There is no interest payable over this period.

As the tenants have been successful in their application, I allow the tenants' request to recover their filing fee.

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 tenants' favour in the amount of \$647.00 for double the security deposit, less the amount already returned, and to recover the \$100.00 filing fee from the landlord.

The tenants are 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: December 14, 2018

Residential Tenancy Branch