



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On August 17, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting the return of her security deposit, and to recover the cost of the filing fee. The matter was set for a conference call.

The Tenant attended the hearing and was affirmed to be truthful in her testimony. As the Landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the Act and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified the Application for Dispute Resolution, and Notice of Hearing had been sent to the Landlords by registered mail on August 24, 2018. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days later. I find that the Landlords have been duly served in accordance with the Act.

The Tenant was provided with the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

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 Tenant testified that the tenancy began on July 15, 2018. Rent in the amount of \$3,950.00 was to be paid by the first day of each month, and the Tenant had paid the Landlords a \$1,975.00 security deposit and a \$1,975.00 pet damage deposit (the deposits).

The Tenant testified that the tenancy ended July 8, 2018, that she and the Landlords conducted move-out inspection same day, and that no move-in inspection had been conducted for this tenancy. The Tenant testified that she provided her forward address to the Landlord during the move-out inspection.

The Tenant testified that the Landlord had returned \$3,650.00 of her deposits to her, but that the Landlord had kept \$300.00 from her deposits. The Tenant testified that at no time had he give the Landlord written or verbal permission to keep part of her deposit.

Analysis

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

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 undisputed testimony of the Tenant, and I find that this tenancy ended, in accordance with the *Act*, on July 8, 2018, the date the tenant moved out and that the Landlords received the Tenant's forwarding address.

Accordingly, the Landlord had until July 23, 2018, to comply with section 38(1) of the *Act* by either repaying the deposits in full to the Tenant or submitting an Application for Dispute resolution to claim against the deposit. In this case, the Landlords returned only \$3,650.00 of the Tenant's \$3,950.00 worth of deposits. I find that the Landlords did not have permission from the Tenant to retain \$300.00 from the deposits and that they have not submitted an Application for Dispute resolution to claim against the portion of the deposit they wished to keep.

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 Landlords breached section 38(1) of the *Act* by not returning the Tenant's full security and pet damage deposits or filing a claim against the deposits 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(6) of the *Act* the Tenant has successfully proven her entitled to the return of double the security deposit. I find for the Tenant, in the amount of \$4,250.00, consisting of \$7,900.00 for the return of double the security and pet damage deposit, less the \$3,650.00 that the Landlord has already returned.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. 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 Landlords breached section 38 of the *Act*, as they failed to repay the full security deposit or make a claim against the portion of the security deposit they wanted to keep 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 \$4,350.00. 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: December 17, 2018

Residential Tenancy Branch