



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 did not attend this hearing, although I waited until 1:42 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 p.m.

The tenants attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. Tenant H.C. (the tenant) stated that they would be the primary speaker for the tenants during the hearing.

Rules 7.1 and 7.3 of the Rules of Procedure provides as follows:

Commencement of the hearing - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The tenant testified that the Application for Dispute Resolution (the Application) and an evidentiary package were sent to the landlord by way of Canada Post Registered mail on June 13, 2018. The tenant provided the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 88, 89 and 90 of the Act, I find that the landlord was deemed served with the Application and an evidentiary package on June 18, 2018.

The tenant gave undisputed affirmed testimony that they sent their forwarding address by registered mail to the landlord on November 14, 2017. The tenant provided the Canada Post Tracking Number to confirm this registered mailing. In accordance

sections 88 and 90 of the *Act*, I find that the landlord is deemed served with tenants' forwarding address on November 19, 2017, five days after its registered mailing.

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 provided a copy of the tenancy agreement which shows that this tenancy began on September 01, 2016, with a monthly rent in the amount of \$2,000.00, due on the first day of each month. The tenancy agreement shows that a security deposit in the amount of \$2,000.00 and a pet damage deposit in the amount of \$1,000.00 were paid to the landlord for a total deposit of \$3,000.00.

The tenant also provided in evidence a copy of the letter containing the tenant's forwarding address dated November 13, 2017, which was provided to the landlord by registered mail on November 14, 2017.

The tenant gave undisputed affirmed testimony that they moved out of the rental unit and that the landlord did not return their security deposit after the tenants provided the landlord with their forwarding address.

Analysis

Section 38 (4) allows a landlord to retain a portion 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 deemed served with the tenants' forwarding address on November 19, 2017, I find that the landlord was obligated to obtain the tenants' written consent to keep the security deposit or to file an Application on or before December 04, 2017, 15 days after receiving the tenants' forwarding address.

I find that there is no evidence provided to show that the landlord had the tenants' agreement in writing to keep 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 19 (1) of the *Act* states that a landlord must not require or accept a security deposit that is greater than one-half of one month's rent payable under the tenancy agreement.

Residential Tenancy Policy Guideline #29 states that, irrespective of any agreement between a landlord and a tenant, if monies paid exceed one-half of one month's rent, then the remedies afforded by the *Act* are available to a tenant. In addition, the *Act* provides that a landlord who contravenes these provisions commits an offence and is liable, on conviction, to a fine of not more than \$5,000.

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 total deposit collected as they have not complied with section 38 (1) of the *Act*.

Therefore, I find that the tenant is entitled to a monetary award of \$6,000.00, which is comprised of double the total deposits (\$3,000.00 X 2), plus applicable interest. 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 \$6,100.00 for double the total deposits collected 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 19, 2018

Residential Tenancy Branch