



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 tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- authorization to obtain a return of all or a portion of her security deposit and pet damage deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both the tenant and the landlord appeared at the hearing. All parties present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that the landlord was served the notice of dispute resolution package by registered mail, but could not recollect the exact date. The landlord confirmed receipt of the dispute resolution package and agreed that the package was received within the timelines as prescribed in the Residential Tenancy Branch Rules of Procedure. Therefore, I find that the landlord was served with the dispute resolution package and evidence in accordance with the *Act*.

The landlord was aware of the application made by the tenant and had an opportunity to prepare for the hearing and submit evidence in response.

The landlord provided his evidence to the tenant, and the tenant confirmed receipt of the landlord's evidence. The tenant testified that she provided evidence to the landlord on a date after serving the notice of dispute resolution package, and stated that the evidence was served by way of registered mail. Although the landlord testified that he

did not receive the tenant's evidence, I noted that much of the tenant's evidence is either a duplicate of the evidence provided by the landlord (such as a condition inspection report, and email and text correspondence between the parties), or documentary evidence which the landlord possesses, such as the tenancy agreement. Therefore, I will accept the tenant's evidence and consider it as part of this application.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of all or a portion of her security deposit and pet damage deposit? If so, should it be doubled?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant testified that the tenancy began on August 30, 2017, and that a security deposit of \$550.00 was provided to the landlord and continues to be held by the landlord. The tenant testified that a pet damage deposit of \$550.00 was also provided to the tenant, which continues to be held by the landlord. The monthly rent was set at \$1,100.00, and remained at that amount at the end of the tenancy. The monthly rent was payable on the first day of each month.

The tenant testified that the tenancy ended on October 28, 2018. The tenant asserted that a condition inspection report was completed, with both parties in attendance, at the start and end of the tenancy. The tenant asserted that the condition inspection at the end of the tenancy was conducted on October 28, 2018, after the tenant had vacated the rental unit.

The tenant provided that after the condition inspection at the end of the tenancy, the condition inspection report was signed by both parties.

The tenant stated that she and the landlord agreed that the landlord could retain a portion from the security deposit in the amount of \$100.00 for damage to the bathroom vanity caused by burn marks left by the tenant's hair straightener, and an additional sum to cover the cost of cleaning for a period of three hours, which the landlord would undertake by way of hiring a cleaning company.

At the time that the condition inspection report was signed, an approximate sum of \$100.00 was agreed-upon as an estimate for the cost of cleaning. The tenant referred

to page three of the condition inspection report, which depicts in writing that the parties agreed to these terms as the damage for which the tenant was found to be responsible.

Therefore, the tenant contended that at the time she signed the condition inspection report, she agreed that the landlord could retain \$200.00 from the security deposit, and asked that the remaining portion of the security deposit, and the entirety of the pet damage deposit, be returned to her. The tenant testified that on October 28, 2018, she signed the condition inspection report on the basis of that understanding and additionally provided her forwarding address in writing on the condition inspection report for the return of the deposits.

The tenant testified that at a later date, the landlord conveyed to her by email, dated November 14, 2018, that the actual cost of the cleaning came to \$152.00, and that the landlord provided an invoice to substantiate that. The tenant testified that she wishes to adhere to the original agreement made with the landlord during the condition inspection, and permits the landlord to retain \$100.00 for damage to the bathroom vanity, and \$152.00 for the costs associated with cleaning the rental unit.

The tenant testified that she provided her forwarding address in writing on October 28, 2018, and that after 15 days had elapsed, she did not receive the agreed-upon sum of the deposits returned to her. Therefore, the tenant seeks a return of double the amount of the unreturned portion of the deposits.

The security deposit being held by the landlord is in the amount of \$550.00, and the tenant agreed that the landlord may retain \$252.00, in adherence to the agreement made between the parties on the condition inspection report. Therefore, the balance of the security deposit to be returned by the landlord is \$298.00, which, when doubled, yields a sum of \$596.00.

The pet damage deposit held by the landlord is \$550.00, which, when doubled, yields a sum of \$1,100.00. Therefore, the total sum of the doubled security deposit and pet damage deposit results in a monetary claim of \$1,696.00 sought by the tenant.

The landlord testified that he is aware of the information provided on the end of tenancy condition inspection report signed by the parties, such as the damage that the tenant was agreed to be liable for, and the arrangement to retain a sum from the security deposit for damage to the vanity and for cleaning costs for a period of three hours. The landlord also testified that he understood that the tenant had provided her forwarding address in writing on the condition inspection report.

The landlord provided that subsequent to the condition inspection on October 28, 2018, he identified additional damage to the rental unit, and additional areas that required cleaning and remediation beyond what he had originally determined. The landlord testified that his intention was to communicate these subsequent findings to the tenant, and to inform the tenant that there would be a higher cost for the additional repair and remediation than was initially estimated during the condition inspection.

The landlord testified that he undertook an effort to communicate with the tenant regarding these issues in the days following the condition inspection, and that his efforts to do so took place within the 15 days allotted to him after receiving the tenant's forwarding address.

The landlord testified that it was not his intention to withhold the deposit, rather, he wished to reason with the tenant in a fair manner to reach an understanding as to a new sum that the parties could agree that the landlord could retain, in light of the landlord's new findings with respect to additional damages and remediation and cleaning required to the rental unit.

Analysis

While I have turned my mind to the accepted documentary evidence and the sworn testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Section 38 of the *Act* requires the landlord to either return a tenant's security deposit and/or pet damage deposit in full or file for dispute resolution for authorization to retain the deposit(s) 15 days after the *later* of the end of a tenancy, or upon receipt of the tenant's forwarding address in writing.

If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit and/or the pet damage deposit. A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

No evidence was produced at the hearing that the landlord applied for dispute resolution within 15 days of receiving a copy of the tenant's forwarding address on October 28,

2018, or following the conclusion of the tenancy. If the landlord had concerns arising from the purported damages that arose as a result of this tenancy, the landlord should have applied for dispute resolution to retain the security deposit and pet damage deposit.

Although the landlord testified that he discovered additional damage to the rental unit after the condition inspection had been completed, and subsequently discovered that the cleaning and remediation costs to certain areas of the unit would be higher than initially estimated, it is inconsequential if damages exist, if the landlord does not take action to address these matters through the dispute resolution process. A landlord cannot decide to simply keep the security deposit and pet damage deposit as recourse for loss.

The parties acknowledged that an agreement was reached with respect to the landlord being able to retain a portion of the deposit for cleaning for a period of three hours and for damage to the bathroom vanity, and that the details of the agreement were recorded on the condition inspection report.

Based on the testimony of the parties, I find that the parties agreed that the landlord may retain \$100.00 for damage to the bathroom vanity, and \$152.00 for the cost of cleaning for a period of three hours, which results in a total amount of \$252.00 that the landlord is permitted to retain subsequent to the agreement between the parties, and based on the testimony provided by the tenant consenting to relinquish that amount from her security deposit.

However, no evidence was produced at the hearing that the landlord received the tenant's written authorization to retain all, or a portion of the remaining balance of the security deposit in the amount of \$298.00 or the pet damage deposit, in the amount of \$550.00, to offset damages or losses arising out of the tenancy as per section 38(4)(a) of the *Act*, nor did the landlord receive an order from an Arbitrator enabling him to do so.

Pursuant to section 38(6)(b) of the *Act*, a landlord is required to pay a monetary award equivalent to double the value of the security deposit and pet damage deposit if a landlord does not comply with the provisions of section 38 of the *Act*. The tenant is therefore entitled to a monetary award in the amount of \$1,696.00, representing a doubling of the unreturned portion of the tenant's security deposit (\$298.00 x 2), and a doubling of the unreturned pet damage deposit (\$550.00 x 2).

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1,796.00 against the landlord, calculated as follows:

Item	<u>Amount</u>
Doubling of Return of unreturned portion of Security Deposit (2 x \$298.00)	\$596.00
Doubling of Return of Pet Damage Deposit (2 x \$550.00)	1,100.00
Recovery of Filing Fee	100.00
Total =	\$1,796.00

The tenant is provided with a Monetary 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 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: January 21, 2019

Residential Tenancy Branch