



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 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 tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions.

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 tenant's evidence which was served by way of registered mail to them on October 20, 2018. In accordance with sections 88 and 89 of the Act, I find that the landlord is duly served with the Application and evidence.

The tenant acknowledged receipt of the landlord's evidence on February 06, 2019, which was served by mail. In accordance with section 88 of the Act, I find that the tenant is duly served with the landlord's evidence.

Issue(s) to be Decided

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

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

Background and Evidence

The tenant testified that this tenancy began on February 15, 2015, with a monthly rent in the amount of \$1,800.00, due on the first day of each month with a security deposit in the amount of \$900.00 and a pet damage deposit in the amount of \$250.00.

The tenant provided in evidence:

- A copy of the letter containing the tenant's forwarding address that was left in the rental unit for the landlord on September 29, 2018.

The landlord provided in evidence:

- A copy of the Condition Inspection Report, signed by the tenant at the move-out to agree to the condition of the unit on September 29, 2018. The tenant's forwarding address is written on the report but there is no signed authorization for the landlord to retain all or a portion of the deposits.

The tenant gave affirmed testimony that they moved out of the rental unit and that the landlord did not return their security and pet damage deposit after the tenant provided the landlord with their forwarding address on September 29, 2018.

The landlord acknowledged receipt of the tenant's forwarding address on September 29, 2018. The landlord confirmed that they did not make an Application for Dispute Resolution to keep the security or pet damage deposits. The landlord confirmed that they did not obtain the tenant's written consent to keep any portion of the security deposit although they stated that the landlord verbally agreed to cover any reasonable costs.

Analysis

Having reviewed the affirmed testimony, I find that the landlord is duly served with tenant's forwarding address on September 29, 2018, pursuant to section 88 of the *Act*.

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 tenant's forwarding address, I find that the landlord was obligated to obtain the tenant's written consent to keep the deposits or to file an application 15 days after receiving the tenant's 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 or pet damage deposit, or that the landlord applied for dispute resolution within 15 days of receiving the tenant's 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 tenant double the security deposit as they have not complied with section 38 (1) of the *Act*.

Therefore, I find that that the tenant is entitled to a monetary award of \$2,300.00, which is comprised of double the security and pet damage deposits plus applicable interest. There is no interest payable over this period.

As the tenant has been successful in their application, I allow the tenant's 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 tenant's favour in the amount of \$2,400.00 for double the security and pet damage deposits, as well as to recover the \$100.00 filing fee from the landlord.

The tenant is 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: February 13, 2019

Residential Tenancy Branch