



Dispute Resolution Services

Page: 1

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 his 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, and the tenant's evidence, by registered mail on November 20, 2018. The landlord confirmed receipt of the dispute resolution package and the tenant's evidence 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 by way of registered mail, and the tenant confirmed receipt of 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 his 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

While I have considered all documentary evidence submitted and all oral testimony of the parties, I will only refer to the evidence I find relevant in this decision. Not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

The tenant testified that he had been the owner of the property which comprises the subject rental property and that the landlord purchased the property from him. The tenant was already residing at the property when the purchaser of the property (the landlord) and the tenant agreed to enter into a tenancy whereby the tenant would rent the subject property from the landlord for the months of July 2018 and August 2018.

The parties agreed that the tenancy began on July 04, 2018, and that a security deposit of \$1,000.00 was provided to the landlord and continues to be held by the landlord. The monthly rent was set at \$2,000.00, and remained at that amount at the end of the tenancy. The monthly rent was payable on the first day of each month. A copy of a residential tenancy agreement was provided by the parties as evidence which confirms the information provided above.

The tenant testified that a condition inspection report was not completed at the start of the tenancy. The tenant provided that a walk-through inspection of the property was done in the presence of the tenant, the landlord, the landlord's realtor, and another individual who would subsequently become the new occupant after the applicant tenant vacated the rental unit.

The tenant stated that this inspection occurred around July 03, 2018 or July 04, 2018, and the details of the inspection were only verbally-agreed to by the parties, and that no condition inspection report was completed, as required under section 23 of the *Act*. The landlord confirmed and agreed with this portion of the tenant's testimony.

The tenant testified that the tenancy ended when he vacated the rental unit on August 29, 2018. The tenant stated that a condition inspection report was not completed at the end of the tenancy, as required under section 35 of the *Act*.

The tenant provided that an informal inspection was completed after the tenant vacated the rental unit, and that it was done in the presence of the individual who would become the new occupant, as the landlord was not able to attend the inspection. Instead, the landlord instructed the new tenant to attend on his behalf. The tenant testified that the details of the inspection at the end of the tenancy were only verbally accounted-for, and that they were not recorded in writing. The landlord agreed with this portion of the tenant's testimony.

The tenant testified that in a letter dated September 23, 2018, he provided his forwarding address in writing to the landlord and requested that the landlord return a portion of the security deposit. In the letter, the tenant requests that the landlord return \$750.00 of the security deposit, as the tenant agreed that the landlord may retain \$250.00 for carpet cleaning and money owed for utilities.

During the hearing, the tenant testified that he wished to amend his monetary claim to only permit the landlord to retain \$116.02 for money owed for utilities. The tenant requests that the landlord be ordered to pay an amount equivalent to double the amount of the remaining balance of the security deposit that the landlord is to return.

The landlord testified that he agreed that a condition inspection report was not completed at the beginning or end of the tenancy. The landlord confirmed that he received the tenant's forwarding address and request for return of the deposit in the form of the tenant's letter dated September 23, 2018, which the landlord testified to having received on September 28, 2018.

The landlord testified that he did not apply for dispute resolution to retain all or part of the tenant's security deposit. The landlord stated that after the tenant vacated the rental unit, he determined there was damage to rental unit which he asserted was caused by the tenant. The landlord cited damage to an interior door, carpets, a garage door, appliances, and further cited issues with the security system, a clogged toilet and an unpaid municipal utility bill as reasons to retain a portion of the deposit.

The landlord cited that the tenant should not be permitted to amend his monetary claim to redact his initial consent in writing, whereby he permitted the landlord to retain \$250.00 of the security deposit. The landlord testified that after receipt of the tenant's

letter, he sent the tenant a cheque in the amount of \$500.00, which was meant to be the return of the tenant's security deposit.

The landlord testified that the tenant requested a return of \$750.00 for the security deposit, as outlined in the tenant's letter. However, given the additional damage cited by the landlord, the landlord decided to retain a larger sum and return only \$500.00. The tenant acknowledged receipt of the landlord's cheque in the amount of \$500.00 and confirmed that he had deposited the funds to his bank account.

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.

Based on the testimony provided by the parties, I find that the landlord received the tenant's written forwarding address on September 28, 2018. The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an arbitrator, or the written agreement of the tenant.

Section 38(1) 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. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*. A landlord may also under sections 38(3) and 38(4) retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator or if the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant.

I find that no move-in condition inspection report was completed in accordance with section 23 of the *Act*. I do not accept that the description of the walk-through provided by the landlord at the start of the tenancy qualifies as a move-in inspection. I also find that no condition inspection was completed at the end of the tenancy in accordance with section 35 of the *Act*.

Therefore, I find the tenant did not extinguish his rights in relation to the security deposit under sections 24 and 36 of the *Act*. I find that the landlord has extinguished his right to claim against the security deposit for damage to the residential property pursuant to section 24(2) and section 36(2) of the *Act*.

Section 38(4) of the *Act* provides, in part, the following:

- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
 - (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant

Section 38(5) of the *Act* states that the right of a landlord to retain all or part of a security deposit subsection under section 38(4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit has been extinguished under section 24 (2) or 36 (2). However, it is still open to the landlord to retain a portion of the security deposit for matters not related to damage to the residential property. In this case, the tenant provided documentary evidence in the form a written submission and written correspondence between the parties in which the tenant provided consent for the landlord to retain from the security deposit an amount of \$116.02 for unpaid utilities owed by the tenant. The tenant provided oral testimony to confirm that he provided consent to the landlord to retain \$116.02 from the security deposit to account for outstanding utilities owed by the tenant.

In the matter before me, I find the landlord did not have any authority under the *Act* to keep any portion of the security deposit beyond the \$116.02 which the tenant permitted the landlord to retain for outstanding utilities owed by the tenant. The landlord did not return the balance of the security deposit, in the amount of \$883.98, as requested by the tenant within 15 days of September 28, 2018 in accordance with the *Act*. The landlord continues to hold the balance of the security deposit.

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 September 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.

Although the landlord testified that he discovered additional damage to the rental unit after the tenant had vacated the rental unit, 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 carpet cleaning and for unpaid municipal utilities. I accept the landlord's testimony that in the September 23, 2018 letter, the tenant expressly stated in writing that the landlord may retain a portion of the deposit for carpet cleaning and for unpaid municipal utilities. The tenant directs the landlord to return \$750.00 of the \$1,000.00 deposit, which, in effect, provides that the tenant provided consent to the landlord to retain \$250.00 of the security deposit. However, as stated above, the landlord has extinguished his right to claim against the security deposit for damage to the rental unit. Therefore, the landlord is only able to retain from the deposit the sum owed for the unpaid municipal utilities, which the tenant permitted the landlord to retain.

Based on the testimony of the parties, and the evidence provided, I find that the tenant agreed that the landlord may retain \$116.02 for unpaid municipal utilities, as expressly stated by the tenant in his documentary evidence and oral testimony.

Although the tenant consented to relinquish \$116.02 from his security deposit, 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 \$883.98 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 \$1,767.96, representing a doubling of the unreturned portion of the tenant's security deposit (\$883.98 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 \$1,367.96 against the landlord, calculated as follows:

Item	Amount
Doubling of Return of unreturned portion of Security Deposit (\$883.98 x 2)	\$1,767.96
Recovery of Filing Fee	100.00
Less \$500.00 cheque from landlord which the tenant deposited	500.00
Total Monetary Award to Tenant	\$1,367.96

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: February 08, 2019

Residential Tenancy Branch