



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "Act"). The Tenants applied for the return of their security deposit. The matter was set for a conference call.

Both the Landlord and the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenants were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenants and the Landlord testified that they received each other's documentary evidence that I have before me.

I have reviewed all evidence and testimony 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.

Preliminary Matter

During the hearing the Landlord raised the issue of jurisdiction, stating that he runs a hotel and that the Residential Tenancy Branch has no jurisdiction to hear this dispute. The Tenants testified that they believed they were under the residential tenancy as this was their primary residence. The Landlord also testified that he had the Tenants sign an agreement stating that this would not be a residential tenancy; however, the Landlord failed to submit that document into to these proceeding, and the Tenants did not agree that they had signed this document.

What this Act does not apply to

4 This Act does not apply to

- (e) living accommodation occupied as vacation or travel accommodation,
- (f) living accommodation provided for emergency shelter or transitional housing,

Residential Tenancy Policy Guideline's are provided as a statement of policy, and they provide guidance on determining the intent of the legislation. Residential Tenancy Policy Guideline #27: Jurisdiction provides, in part, the following statements:

Vacation or Travel Accommodation and Hotel Rooms

The RTA does not apply to vacation or travel accommodation being used for vacation or travel purposes. However, if it is rented under a tenancy agreement, e.g. a winter chalet rented for a fixed term of 6 months, the RTA applies.

Whether a tenancy agreement exists depends on the agreement. Some factors that may determine if there is a tenancy agreement are:

- Whether the agreement to rent the accommodation is for a term;
- Whether the occupant has exclusive possession of the hotel room;
- Whether the hotel room is the primary and permanent residence of the occupant.
- The length of occupancy.

Even if a hotel room is operated pursuant to the Hotel Keeper's Act, the occupant is charged the hotel room tax, or the occupancy is charged a daily rate, a tenancy agreement may exist. A tenancy agreement may be written, or it may be oral.

I have reviewed the testimony and the documentary evidence provided by both parties and I accept that there was an agreement between them to rent a unit for four months, that the applicants had exclusive possession of the rental unit during that time, that they had paid the Landlord a security deposit and pet damage deposit, and that the rental unit was their primary residence.

There is no evidence before me to show that this living arrangement had been for Vacation or Travel or as transitional housing. There is, however, agreed upon testimony that shows that this living arrangement had been for several months, with exclusive possession and set terms for rent and deposits. Therefore, I find that this was a residential tenancy and I accept jurisdiction over the dispute between these parties.

Issues to be Decided

- Has there been a breach of Section 38 of the *Act* by the Landlord?
- Is the Tenant entitled to the return of her security deposit?
- Is the Tenant entitled to recover the filing fee for this application?

Background and Evidence

Both parties agreed that the tenancy began at the beginning of May 2018. Rent in the amount of \$950.00 was to be paid by the first day of each month. The Landlord confirmed that both a security and pet damage deposits had been paid for this tenancy. However, the Landlord was not able to testify to the amounts of the deposits. The Tenants testified that they paid the Landlord a \$400.00 security deposit and a \$275.00 pet damage deposit (the “deposits”). The parties agreed that the Tenants moved out of the rental unit as of the end of August 2018 and that the Landlord had returned \$350.00 of their deposits.

The Tenants testified that they provided the Landlord with their forwarding address on August 14, 2018, and that at no time had they given the Landlord permission to keep any portion of their deposits.

The Landlord testified that he had not returned the deposits to the Tenant, within the required timeline, due to his belief that this living arrangement was not a residential tenancy and that their agreement stated that he could keep the deposits due to damages and cleaning costs. The Landlord also testified that he had informed the Tenant of the reasons why he would be keeping the deposits, but that the Tenants had not agree to him keeping the deposits. The Landlord testified that as of the date of this hearing he had not filed an Application for Dispute Resolution claiming against the deposit.

Analysis

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

I find that the parties to this dispute entered into a month to month tenancy agreement as of May 1, 2018, in accordance with the *Act*. I accept the testimony provided by the Tenants, and I find that a \$400.00 security deposit and a \$275.00 pet damage deposit had been paid by the Tenants to the Landlord for this tenancy.

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 deposits or repay the security deposit and pet damage 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 testimony of the Tenants and find that this tenancy ended as of August 31, 2018, and that the Tenants provided her forward address to the Landlord, in writing, on August 14, 2018. Accordingly, the Landlord had until September 15, 2018, to comply with section 38(1) of the *Act* by either repaying the deposits in full to the Tenants or submitting an Application for Dispute resolution to claim against the deposits. The Landlord, in this case, did neither.

At no time does a landlord have the right to simply keep the security or pet damage 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, in writing, 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 Landlord breached section 38 (1) of the *Act* by not returning the Tenants' deposits in full 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 Tenants have successfully proven that their entitlement to the return of double their deposits. I find for the Tenants, in the amount of \$1,000.00; consisting of the return of double the security deposit \$800.00 (\$400.00 x2), double the pet damage deposit \$550.00 (\$275.00 x2), less the \$350.00 already returned by the Landlord. I grant the Tenants a **Monetary Order**, in the amount of **\$1,000.00** for the return of double the security deposit and pet damage deposit.

Security Deposit	\$400.00
Pet Damage Deposit	\$275.00
	<hr/>
	\$675.00
Deposits Doubled	\$675.00
	<hr/>
	\$1,350.00
Less portion of Security Deposit already returned	\$350.00
Owing	\$1,000.00

Conclusion

I find that the Landlord breached section 38 of the *Act* when he failed to repay or make a claim against the security deposit and pet damage deposit as required by the *Act*.

I find for the Tenants pursuant to sections 38 and 72 of the *Act*. I grant the Tenants a **Monetary Order** in the amount of **\$1,000.00**. 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 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 13, 2019

Residential Tenancy Branch