



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.

The tenant, the landlord agent "NZ" ("NZ"), and the building manager "GK" ("GK") 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. The landlord confirmed receipt of the dispute resolution package and the tenant's evidence. Therefore, I find that the landlord was served with the dispute resolution package and the tenant's evidence in accordance with the Act.

The landlord testified that their evidence was served to the tenant, 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 parties agreed that the tenancy began on August 01, 2017, and that a security deposit of \$890.00 was provided to the landlord and continues to be held by the landlord. The monthly rent was set at \$1,780.00, and 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 parties agreed that a condition inspection was conducted at the start of the tenancy, with both parties in attendance. The parties agreed that a condition inspection report was completed subsequent to the condition inspection at the start of the tenancy.

The parties agreed that a condition inspection was conducted at the end of the tenancy, after the tenant had vacated the rental unit, with both parties in attendance. The parties agreed that a condition inspection report was completed subsequent to the condition inspection at the end of the tenancy. The parties agreed that the condition inspection conducted at the end of the tenancy occurred on October 20, 2018.

The parties testified and agreed that after the conclusion of the condition inspection at the end of the tenancy, the tenant provided his forwarding address in writing on the condition inspection report.

The tenant testified that he vacated the rental unit on October 20, 2018, and that on that date, he returned all means of access to the rental unit and the apartment building in which the rental unit is located. The tenant provided that he returned the keys to the rental unit, along with any means by which to access the apartment building, such as keys and "fob keys".

The tenant testified that at the conclusion of the condition inspection at the end of the tenancy, which took place on October 20, 2018, the tenant asked for the return of the security deposit after providing his forwarding address in writing on the condition

inspection report. The tenant provided that the landlord conveyed that the rental unit was in good condition and that the entire sum of the security deposit would be returned.

The tenant testified that he has not received the return of his security deposit, and that since the 15-day period within which the landlord is to return the deposit after receiving the tenant's forwarding address had passed, the tenant requests that the landlord be ordered to pay an amount equivalent to double the amount of the security deposit that the landlord had agreed to return. Therefore, the tenant seeks that the landlord be ordered to pay the sum of \$1,780.00, which represents double the amount of the security deposit of \$890.00.

The landlord testified to confirm that the tenant had vacated the rental unit by October 20, 2018 and had returned all keys and means of access to the rental unit and apartment building. The landlord testified to confirm that the condition inspection at the end of tenancy took place on October 20, 2018, and that an end of tenancy condition inspection report was signed by both parties. The landlord confirmed that the tenant provided his forwarding address in writing on the condition inspection report on October 20, 2018.

The landlord testified that after receiving the tenant's forwarding address, an attempt was made on November 08, 2018 to return the tenant's security deposit.

The landlord testified that its office mailed a cheque to the tenant on November 08, 2018, which was sent by regular mail to the forwarding address provided by the tenant. The landlord testified that the cheque was mailed to the correct address but later realized that the landlord had listed an incorrect postal code. The landlord testified that the cheque was never cashed and that the mailed item in which the cheque was sent was never returned.

The tenant testified to deny having received a cheque in the mail, as stated by the landlord.

Analysis

Section 44 of the Act provides, in part, the following:

How a tenancy ends

44 (1)A tenancy ends only if one or more of the following applies:

(d) the tenant vacates or abandons the rental unit;

The parties provided affirmed testimony that by October 20, 2018, the tenant had vacated the rental unit and returned all means of access (keys to the rental unit, keys and fob keys to access the apartment building) to the rental unit and the apartment building in which the rental unit is located. The landlord testified that the tenant did not return to the apartment building after October 20, 2018. Therefore, as the tenant vacated the rental unit on October 20, 2018, I find that in accordance with section 44(1)(c) of the Act, the tenancy ended on October 20, 2018.

Based on the testimony provided by the parties, I find that the landlord received the tenant's written forwarding address on October 20, 2018, the same date the tenancy ended. 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 a move-in condition inspection report was completed in accordance with section 23 of the Act. I also find that a 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.

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. The parties provided affirmed testimony to agree that at the end of the condition inspection after the tenant had vacated the rental unit, the landlord had agreed to return the entire sum of the security deposit, as the landlord did not identify any reasons to withhold the deposit.

The condition inspection report completed at the end of the tenancy, which was signed by both parties, indicates that a balance of \$890.00 is due to the tenant, which represents the entire sum of the security deposit.

The landlord did not return the security deposit, in the amount of \$890.00, as requested by the tenant within 15 days of October 20, 2018 in accordance with the Act. The landlord continues to hold the balance of the security deposit. The landlord testified that it attempted to return the security deposit on November 08, 2018. However, the tenant submitted that he never received the cheque. Even if the tenant had received it, the November 08, 2018 date falls after the 15-day period which is counted from October 20, 2018, the date on which the tenancy ended and the tenant provided his forwarding address in writing.

I accept the testimony from both parties, which confirms that the funds of the cheque were never deposited, such that the tenant has not yet received any sum from the landlord to represent the return of his security deposit. The landlord provided testimony to affirm that the cheque was never cashed, and the tenant testified that he did not receive the cheque.

Notwithstanding the foregoing, I find that the final date on which the landlord could return the security deposit in accordance with section 38(1) was November 04, 2018. However, the landlord provided affirmed testimony that the landlord did not attempt to return the security deposit until November 08, 2018, thereby, testifying that the landlord violated the provisions of section 38(1) of the Act.

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 20, 2018 following the conclusion of the tenancy.

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 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 \$1,780.00, representing a doubling of the tenant's unreturned security deposit (\$890.00 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 \$1,880.00 against the landlord, calculated as follows:

Item	Amount
Doubling of unreturned Security Deposit (\$890.00 x 2)	\$1,780.00
Recovery of Filing Fee	100.00
Total Monetary Award to Tenant	\$1,880.00

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: February 22, 2019

Residential Tenancy Branch