Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on October 21, 2018 (the "Application"). The Tenants applied for the return of the security and pet deposits and reimbursement for the filing fee.

The Tenant appeared at the hearing. The Landlord did not appear at the hearing. The Tenant confirmed the Tenants are seeking double the security and pet deposits if I find the Landlord breached the *Residential Tenancy Act* (the "*Act*").

I explained the hearing process to the Tenant who did not have questions when asked. The Tenant provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Tenant testified that the hearing package and evidence were sent by registered mail to the Landlord's address on October 25, 2018. The Tenant testified that the Landlord lived at the address when the Tenants vacated the rental unit September 30, 2018. The Tenants had submitted a copy of the registered mail receipt with Tracking Number 1 on it. I looked this up on the Canada Post website which shows the package was delivered and signed for October 26, 2018. The delivery confirmation does not show a signature but shows the signatory name as the Landlord's name.

As stated, the Landlord submitted evidence for this hearing. In the package submitted by the Landlord, the Landlord states, "I will not be available at 1:30 p.m. February 15th" and states that she will not have access to a phone at that time.

Based on the undisputed testimony of the Tenant, evidence submitted and Canada Post website information, I find the Landlord was served with the hearing package and evidence in accordance with sections 88(c) and 89(1)(c) of the *Act*. Further, I accept the Landlord received the hearing package and evidence October 26, 2018 which I find to be in sufficient time to prepare for, and appear at, the hearing.

The finding that the Landlord received the hearing package and evidence is further supported by the fact that the Landlord submitted evidence for this hearing. Further, the Landlord must have been aware of the hearing date and time as she referenced these in her written submissions.

As I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenant was given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all admissible documentary evidence and oral testimony of the Tenant. I have only referred to the evidence I find relevant in this decision.

Rule 7.4 of the Rules of Procedure states as follows:

> Evidence must be presented by the party who submitted it, or by the party's agent.
>
> If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

I decline to consider the evidence and submissions of the Landlord in the absence of the Landlord or an agent to present these and answer questions in relation to these. I acknowledge that the Landlord indicated that she was unable to attend the hearing; however, parties can attempt to reschedule hearings and otherwise are required to attend the hearings or have someone attend as their agent. I have considered the tenancy agreement submitted by the Landlord given the nature of the document.

Issues to be Decided

1. Are the Tenants entitled to return of double the security and pet deposits?

2. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant agreed the written tenancy agreement submitted is accurate. It is between the parties in relation to the rental unit. The tenancy started May 1, 2018 and was a month-to-month tenancy. The Tenants paid a $750.00 security deposit and $250.00 pet deposit. The agreement has an addendum. The agreement is signed by the Landlord and Tenants.

The Tenant testified as follows.

The tenancy ended September 30, 2018.

The Tenants provided their forwarding address in a letter sent to the Landlord October 4, 2018 by registered mail. A copy of this letter was submitted as evidence along with the customer receipt for the registered mail. The customer receipt includes Tracking Number 2. I looked this up on the Canada Post website which shows the letter was delivered and signed for October 9, 2018. The delivery confirmation does not show a signature but shows the signatory name as the Landlord.

The Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy. The Tenants did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security or pet deposits. The Tenant is not aware of the Landlord applying to keep the deposits.

The Tenants received a cheque in the amount of $649.65 on October 25, 2018 from the Landlord in relation to the deposits. The Tenant did not submit that there was an issue with the cheque.

No move-in or move-out inspections were done. The Landlord never provided the Tenants with two opportunities to do these inspections.

Analysis

Section 38 of the *Act* sets out the obligations of landlords in relation to security and pet deposits held at the end of a tenancy.

Section 38(1) requires landlords to return the security and pet deposits or claim against them within 15 days of the later of the end of the tenancy or the date the landlord

receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

I accept the undisputed testimony of the Tenant and find as follows.

The Landlord did not provide the Tenants with two opportunities to do a move-in or move-out inspection and therefore the Tenants did not extinguish their rights in relation to the security or pet deposits under sections 24 or 36 of the *Act*.

The tenancy ended September 30, 2018. The Landlord received the Tenants' forwarding address October 9, 2018. Therefore, October 9, 2018 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from October 9, 2018 to repay the security and pet deposit or claim against the deposits.

The Landlord repaid $649.65 of the deposits on October 25, 2018. However, repaying a portion of the deposits is not sufficient. The Landlord was required to repay the full deposits or claim against them. The Landlord did neither. Therefore, the Landlord failed to comply with section 38(1) of the *Act*.

The exceptions outlined in sections 38(2) to 38(4) of the *Act* do not apply.

Given the Landlord failed to comply with section 38(1) of the *Act*, and that none of the exceptions apply, the Landlord is not permitted to claim against the security or pet deposits and must return double the security and pet deposits to the Tenants pursuant to section 38(6) of the *Act*.

I note that the Landlord was not permitted to deduct from the security or pet deposits simply because she felt the Tenants owed monies for damage, cleaning or bills. If the Landlord thought she was entitled to deduct from the security or pet deposits, she was required to file an application for dispute resolution claiming against them.

Policy Guideline 17 deals with security and pet deposits and doubling and states:

> The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:
>
> Example A: A tenant paid $400 as a security deposit. At the end of the tenancy,

> the landlord held back $125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.
>
> The arbitrator doubles the amount paid as a security deposit ($400 x 2 = $800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is $525.00 ($800 - $275 = $525).

This example applies here. Therefore, the original amount of the deposits is doubled equalling $2,000.00. The amount already returned is deducted which leaves $1,350.35 to be returned to the Tenants. I note that there is no interest owed on the deposits as the amount of interest owed has been 0% since 2009.

As the Tenants were successful in this application, I grant them reimbursement for the $100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants are entitled to a Monetary Order in the amount of $1,450.35.

Conclusion

The Tenants are entitled to a Monetary Order in the amount of $1,450.35 and I grant the Tenants a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with this Order, the 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 *Act*.

Dated: February 26, 2019

Residential Tenancy Branch