



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 for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*"). The Tenant applied for the return of the security deposit, and to recover her filing fee. The matter was set for a conference call.

One of the Landlords and an Agent for the Tenant (the "Tenant") attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenant and the Landlord testified that they received each others 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.

Issues to be Decided

- Has there been a breach of Section 38 of the *Act* by the Landlords?
- 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 on February 16, 2017, as a six-month fixed term tenancy. Rent in the amount of \$1,700.00 was to be paid by the sixteenth day of

each month, and that the Landlords collected a \$1,700.00 security deposit for this tenancy. Both parties agreed that there was no pet damage deposit for this tenancy. The Landlords submitted a copy of the tenancy agreement into documentary evidence.

When questioned by this arbitrator, why the Landlords had collected twice the amount allowed under the legislation for the security deposit, the Landlord answered that he thought the *Act* was just a guideline. The Landlord also testified that he had written into his tenancy agreement that he would be collecting a \$1,700.00 security deposit and that the Tenant had agreed.

The Landlord testified that at the end of the initial fixed term, the parties entered into a new tenancy agreement that began on August 16, 2017, for an additional six-month fixed term. The Landlords submitted a copy of the second tenancy agreement into documentary evidence.

The Landlord testified that he had received an email from the Tenant, stating that they wished to continue the tenancy on a month to month bases. The Landlord testified that he had not responded to the Tenant's email.

The Landlord also testified that at the end of the second fixed term tenancy he had been out of the country and his wife and accepted a third fixed term tenancy with the Tenants, for five months. The third fixed term tenancy agreement that began on April 1, 2018, and ended on August 14, 2018. The Landlords submitted a copy of the second tenancy agreement into documentary evidence

The Landlord testified that he had "clearly" written on the initial tenancy that each fixed term for this tenancy could be for a six-month minimum and that Therefore, the third tenancy agreement ran from April 1, 2018, and ended on September 14, 2018.

The Tenant testified that she had given the Landlords written notice on March 15, 2018, that she would be ending the tenancy as of August 14, 2018.

The parties agreed that the Tenant moved out of the rental unit as of August 14, 2018, and that the Landlords had received the Tenant's forwarding address as of August 16, 2018.

The Tenant testified that at no time had the Landlords been given written permission to keep the deposits.

The Landlord testified that he had not returned the security deposit to the Tenant, within the required timeline, due to an outstanding rent due for the rental unit for the period of August 15 to September 14, 2018. The Landlord also testified that he had informed the Tenant of the reasons why he would be keeping the security deposit. The Landlord testified that as of the date of this hearing they 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 have reviewed the three tenancy agreements submitted into evidence by the Landlord, for this tenancy. I find that the tenancy between these parties started in February 16, 2017, for an initial six-month fixed term, that would roll into a month to month at the end of the fixed term unless a new tenancy agreement were entered into by the Landlord and the Tenant.

After reviewing the second and third tenancy agreements, submitted by the Landlord, and noted that they both had been amended with blue pen, changing the start date and end dates of the tenancy, both were initialled by one party. However it is unclear as to who initialled the changes, the Landlord or the Tenant.

After reviewing all three of the tenancy agreements, submitted into evidence by the Landlords, I find that, since both parties did not initial the changes or re-sign the amended tenancy agreements, that the first tenancy agreement, signed on February 16, 2017, to be the only legally binding tenancy agreement before me. Additionally, I find that this tenancy rolled into a month-to-month tenancy agreement at the end of the initial fixed term, on August 15, 2017.

Regarding the security deposit collected by the Landlords, section 19 of the *Act* set out the limits a landlord may require, stating the following:

Limits on amount of deposits

19 (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

I accept the testimony of both parties that the Landlords had collected a \$1,700.00 security deposit for this tenancy, the equivalent of one-months' rent under the tenancy agreement. I find that the Landlords breach section 19 of the Act by requiring the Tenant to pay double the allowable security deposit under this tenancy agreement.

I acknowledge the Landlord's testimony that the Tenant had agreed in their signed tenancy agreement to the \$1,700.00 security deposit amount. However, section 5 of the Act, speaks directly to attempts by landlords or tenants to contract contrary to the Act. Section 5 of the Act states the following:

This Act cannot be avoided

- 5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
- (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Pursuant to section 5 of the Act, I find that the Landlord's attempting to contract to a larger security deposit than allowed under section 19 of the Act, to be of no effect.

Regarding the Tenant's claim for the return of the security deposit for this tenancy, section 38 of the Act set out what is required to happen with the security deposit at the end of the 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 agreed upon testimony of these parties, and find that this tenancy ended on August 14, 2018, the date the Tenant moved out of the rental unit. I also accept the Landlord's testimony that he was in receipt of the Tenant's forward address as of August 16, 2018. Accordingly, the Landlords had until August 31, 2018, to comply with section 38(1) of the *Act* by either repaying the deposits in full to the Tenant or submitting an Application for Dispute resolution to claim against the deposits. The Landlords, in this case, did neither.

At no time does a landlord have the right to simply keep the security 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 Landlords breached section 38(1) of the *Act* by not returning the Tenant's deposits 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 Tenant has successfully proven that she is entitled to the return of double the security deposit. I find for the Tenant, in the amount of \$3,400.00, granting a monetary order for the return of double the security deposit held for this tenancy.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has been successful in her

application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

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

I find for the Tenant pursuant to sections 38 and 72 of the *Act*. I grant the Tenant a **Monetary Order** in the amount of **\$3,500.00**. 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 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: March 13, 2019

Residential Tenancy Branch