



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for the return of the security deposit and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant and Landlord were both present for the duration of the teleconference hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of some of the Tenant’s evidence. The evidence submitted by the Tenant was reviewed and the Landlord stated that he had not received 8 photos that were submitted to the Residential Tenancy Branch. As such, the photos will not be considered as evidence in this decision. The Tenant confirmed receipt of a copy of the Landlord’s evidence. Neither party brought up any other issues regarding service.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch 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

Is the Tenant entitled to the return of the security deposit?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy which were also confirmed by the tenancy agreement that was included in evidence. The tenancy began on October 23, 2017 and ended on November 20, 2018. Monthly rent for the majority of the tenancy was \$2,500.00 and was increased to \$2,600.00 for the last month. A security deposit of \$1,250.00 was paid at the outset of the tenancy. The Landlord is still in possession of the full security deposit amount.

The Tenant testified that he had made arrangements to meet the Landlord at the rental unit at 5:00 pm on November 20, 2018. The Tenant stated that when they arrived the Landlord had already walked through the rental unit. The Condition Inspection Report was submitted into evidence and states that the move-in inspection was conducted on October 23, 2017 and the move-out inspection on November 20, 2018. The move-in inspection was completed but not signed by either party although both parties agreed that it was conducted.

The move-out inspection was not checked off, but the Landlord testified that it was summarized at the end of the report regarding cleaning, repairs, landscaping and other damage. The move-out inspection was signed by both parties.

The Tenant stated that he did not sign the move-out inspection agreeing to any deductions from his deposit.

Section Z of the move-out inspection states the following:

Cleaning (fridge, bathrooms, range, oven, countertops etc.); refinishing/repairing (window sills, kitchen drawer, cabinet, walls, deck, garage floor, etc.); landscaping.

The report stated that the cost for repairs and cleaning will be the security deposit amount of \$1,250.00 plus an additional \$750.00. The Tenant did not sign agreeing to any deductions and confirmed that he has not done so since.

The Landlord stated that the Tenant asked for further quotations regarding the repair work which were sent to him within two weeks. However, the Landlord confirmed that since sending the quotations, the Tenant did not agree in writing to any deductions from the security deposit. The Landlord submitted email correspondence between the parties

that occurred following the end of the tenancy. The Landlord stated that he did not file an Application for Dispute Resolution against the security deposit.

The parties agreed that the Tenant's forwarding address was provided in writing on November 20, 2018 on the move-out Condition Inspection Report.

The Tenant stated that he is only seeking the return of his security deposit in the amount of \$1,250.00 and confirmed that he is waiving his right to receive double the deposit.

Analysis

Section 38(1) of the *Act* states the following regarding the security 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.

The parties were in agreement that the tenancy ended on November 20, 2018, the same day that the Tenant's forwarding address was provided in writing. Therefore, I find that the Landlord had 15 days from this date to either return the deposit or file a claim against it.

I also note that a landlord may retain an amount from the deposit that the Tenant has agreed to in writing, pursuant to Section 38(4)(a) of the *Act*. Although the Condition Inspection Report at move-out notes that the Landlord is requesting to retain the security deposit as well as an additional \$750.00, I do not find this to be the Tenant's agreement in writing, given that that section of the report is not signed and instead states that the Tenant would like further quotes regarding the work.

The parties also agreed that no permission was provided in writing following November 20, 2018 which was confirmed by the email correspondence included as evidence.

While it does seem that the parties discussed the Landlord's request to retain the security deposit, I find that agreement in writing from the Tenant was never provided. Although the move-out inspection was signed agreeing to the condition of the rental unit, I do not find evidence of a written agreement providing permission to the Landlord to retain any amount from the security deposit.

Although the Landlord presented testimony and evidence regarding damage and repairs to the rental unit, the Landlord confirmed that he did not file an Application for Dispute Resolution. As the Landlord was not in compliance with Section 38(1) of the *Act*, I therefore find that Section 36(6) of the *Act* applies as follows:

- (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.

Accordingly, I find that the Tenant is entitled to the return of double the security deposit. However, *Residential Tenancy Policy Guideline 17: Security Deposit and Set Off* states the following:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit.

I accept the testimony of the Tenant that they have waived their right to claim double the deposit and therefore award the Tenant the return of the security deposit in the amount of \$1,250.00. As the Tenant was successful with the application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00 for a total monetary award of \$1,350.00.

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$1,350.00** for the return of the security deposit and the recovery of the filing

fee paid for the Application for Dispute Resolution. 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: April 08, 2019

Residential Tenancy Branch