



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

One of the Landlords and one of the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlords 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 Landlords 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?
- Are the Tenants entitled to the return of her security deposit?
- Are the Tenants entitled to recover the filing fee for this application?

Background and Evidence

Both parties agreed that the tenancy began on November 1, 2017, as a one-year fixed term tenancy with a move-out clause, and an end of tenancy date of October 31, 2018. Rent in the amount of \$1,950.00 was to be paid by the first day of each month, and that the Tenants paid the Landlords a \$975.00 security deposit (the deposit) at the outset of the tenancy.

The parties also agreed that the tenancy ended in accordance with their signed agreement and that the Tenants moved out of the rental unit on October 31, 2018, in accordance with the *Act*. The Landlords and Tenants agreed that the Tenants provided the Landlord with their forwarding address by Canada post sent on December 15, 2018 and that at no time had the Landlord been given written permission to keep the deposit.

The Landlord testified that they had not returned the deposits to the Tenants due to an outstanding repair bill for the rental unit. The Landlord also testified that the Tenants had entered into a new verbal tenancy agreement with them to extend their tenancy for another year, but that two weeks before the end of October 2018, the Tenants changed their mind and refused to sign the new tenancy agreement. The Landlord and the Tenant agreed that no new tenancy agreement had been signed between these parties.

The Landlords testified that the written move-in and move-out inspections had been completed but that both the Landlords and the Tenants had not signed the document. The Landlords also testified that they had informed the Tenants of the reasons why they would be keeping \$411.42 of the deposit. The Landlords testified that as of the date of this hearing they had not filed an Application for Dispute Resolution claiming against the deposit.

The Tenants agreed that they had received \$563.52 of their \$975.00 deposit back from the Landlords. The Tenants are requesting the return of the full deposit and that the doubling provision is applied as the Landlords' breached the *Act* by keeping a portion of the deposit without their permission.

The Landlord testified that she did not apply for a dispute resolution hearing to retain the portion deposit she kept as she did not know she needed to apply.

Analysis

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

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 October 31, 2018, the date the Tenants moved out of the rental unit. I also accept that the Tenant mailed their forwarding address to the Landlord on December 15, 2018, and I find that the Landlords were deemed to have received that mail five days after it was mailed, as of December 20, 2018, pursuant to section 90 of the *Act*. Accordingly, the Landlord had until January 4, to comply with section 38(1) of the *Act* by either repaying the deposit in full to the Tenants or submitting an Application for Dispute resolution to claim against the deposit. 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 Tenants' 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 Tenants have successfully proven that they are entitled to the return of double their deposits.

I grant the Tenants a monetary order in the amount of **\$1,386.48**; consisting of the return of double the security deposit in the amount of \$1,950.00, less the \$563.52 that has already been returned by the Landlord.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been successful in their application, I find that the Tenants are entitled to recover the **\$100.00** filing fee paid for this application.

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 Tenant pursuant to sections 38 and 72 of the *Act*. I grant the Tenants a **Monetary Order** in the amount of **\$1,486.48**. The Tenants are provided with this Order in the above terms, and the Landlords must be served with this Order as soon as

possible. Should the Landlords 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: May 13, 2019

Residential Tenancy Branch