



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 pursuant to the *Residential Tenancy Act* (the *Act*) for:

- return of the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee for this application pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The tenants testified that the landlord was served with the application for dispute resolution and evidence by Canada Post registered mail on January 29, 2019, which was confirmed received by the landlord. The landlord testified that he served the tenants with evidence by email and by delivery to them at their home address by a third party, which was confirmed received by the tenants. Therefore, I find that all the hearing documents for this matter were sufficiently served for the purposes of this hearing in accordance with the *Act*.

Issue(s) to be Decided

Are the tenants entitled to the return of all or a portion of the security deposit? And if so, are the tenants entitled to any statutory compensation as a result of the landlord's failure to comply with the security deposit requirements of the *Act*?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A copy of the written tenancy agreement was submitted into documentary evidence, which provided the following information about the tenancy agreement:

- This tenancy began as a fixed term on April 1, 2013, with a scheduled end date of March 31, 2014. At the end of the fixed term, the tenancy converted to a month-to-month tenancy.
- At the beginning of the tenancy, the tenants paid the landlord a security deposit of \$787.50 and a pet damage deposit of \$787.50, which the landlord continues to hold.
- Monthly rent payable on the first of the month increased to \$1,617.00 by the end of the tenancy.

The parties confirmed that the tenants moved out and returned vacant possession of the rental unit to the landlord effective November 15, 2018.

The landlord testified that a condition inspection walk-through of the rental unit was completed by the landlord and tenants at the beginning of the tenancy, but the landlord did not provide a written report of this condition inspection to the tenants.

The landlord testified that upon move-out, a condition inspection walk-through of the rental unit was completed by the landlord and the tenants, but the landlord did not provide a written report of this condition inspection to the tenants.

The tenants provided their forwarding address to the landlord via email on November 1, 2018, which was confirmed received by the landlord on that date.

Both parties confirmed that the tenants never provided the landlord with written authorization to deduct any amount from the security or pet damage deposits.

The landlord confirmed that he was not granted a monetary order through a prior arbitration hearing to retain any portion of the tenants' security or pet damage deposits.

The landlord submitted photographic evidence pertaining to damages discovered at the end of the tenancy. The landlord testified that he retained the security and pet damage deposits in satisfaction of these costs.

The landlord confirmed that he did not file an application for dispute resolution to retain any portion of the security and pet damage deposits.

I explained to the parties that the only matter before me for decision at this hearing was to make a determination on the tenants' application for the return of the security and pet damage deposits, and that any testimony in relation to the alleged damages to the rental unit was not relevant for making a determination in this matter. I informed both parties that they were both at liberty to make claims for damages in relation to the tenancy in accordance with the time limits provided by the *Act*.

I further explained that the *Act* contains statutory provisions which can require that in certain circumstances a landlord must repay a tenant double the security deposit. If a tenant is entitled to doubling of the deposit, I must award the tenant double the deposit unless the tenant expressly waives entitlement. Accordingly, I have considered whether the tenants are entitled to the doubling provision in making this decision.

Analysis

The *Act* contains comprehensive provisions on dealing with security and pet damage deposits. Under section 38 of the *Act*, the landlord is required to handle the security and pet damage deposits as follows:

- 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.

...

- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
 - (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
 - (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

...

- (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.

At no time does the landlord have the ability to simply keep all or a portion of the security deposit because they feel they are entitled to it due to damages caused by the tenant. If the landlord and the tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, 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.

In this matter, the tenancy ended on November 15, 2018, and the landlord received the tenants' forwarding address on November 1, 2018. Therefore, the landlord had 15 days from November 15, 2018, which is the later date, to address the security and pet damage deposits in accordance with the *Act*.

The landlord confirmed that he had not applied for arbitration within 15 days of the end of the tenancy or receipt of the forwarding address of the tenants, to retain all or a portion of the security and pet damage deposits, as required under section 38 of the *Act*.

It was confirmed by both parties that the tenants did not provide the landlord with any authorization, in writing, for the landlord to retain any portion of the security and pet damage deposits.

I further note that the landlord extinguished the right to claim against the security and pet damage deposits by failing to provide a written condition inspection report at the beginning of the tenancy. This extinguishment is explained in section 24(2) as follows:

- 24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 23 (3) [*2 opportunities for inspection*]
 - (b) having complied with section 23 (3), does not participate on either occasion, or
 - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The landlord may only keep all or a portion of the security and pet damage deposit through the authority of the *Act*, such as an order from an Arbitrator, or with the written agreement of the tenant. In this matter, I find that the landlord did not have any authority under the *Act* to keep any portion of the security deposit.

I note that the landlord provided verbal testimony and documentary evidence about the issue of damages caused by the tenants; however, the landlord is unable to make a monetary claim through the tenants' Application.

The landlord may still file their own Application for compensation for the alleged damages caused by the tenants; however, the issue of the security and pet damage deposits has now been conclusively dealt with in this hearing.

Based on the above legislative provisions and the testimony and evidence of both parties, on a balance of probabilities, I find that the landlord failed to address the security deposit in compliance with the *Act*.

As such, in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to a monetary award of \$3,150.00, which is equivalent to double the value of the security and pet damage deposits paid by the tenants at the beginning of the tenancy, with any interest calculated on the original amount only. No interest is payable for this period.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application from the landlord.

In summary, I order that the landlord pay the tenants the sum of **\$3,250.00** in full satisfaction of compensation to the tenants for failing to comply with section 38 of the *Act*, and recovery of the filing fee paid by the tenants for this application.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$3,250.00 pursuant to sections 38, 67 and 72 of the *Act*.

The tenants are 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: May 14, 2019

Residential Tenancy Branch