



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNSD**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- Authorization to recover the filing fees from the landlord pursuant to section 72; and
- An order for the return of a security deposit or pet damage deposit pursuant to section 38.

Both parties attended the hearing. The landlord was represented by his agent/son RB ("landlord"). The landlord acknowledged receipt of the tenant's application for dispute resolution and evidence and stated there were no concerns with timely service of documents. The landlord did not provide any documentary evidence for this hearing. The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed testimony, make submissions, and to question the other party on the relevant evidence provided in this hearing.

I have reviewed all oral and written evidence 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.

Preliminary Matters

Section 63 of the *Act* allows an Arbitrator to assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision and include an Order. Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms for a Settlement Agreement with the input from both parties. The parties could not find consensus on the terms of a Settlement Agreement; therefore, the following testimony and evidence was heard, and a Decision made by myself (the Arbitrator).

Issue(s) to be Decided

Is the tenant entitled to a return of her security deposit, doubled?
Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenant gave the following testimony. The rental unit is the lower unit of a house with upper and lower rental units. She moved into the rental unit on August 28, 2019, however wasn't required to start paying rent until September 1, 2018. Rent was set at \$1,200.00 per month. The landlord collected a security deposit in the amount of \$600.00 which he still holds.

The tenant testified a tenancy agreement was not provided to her to sign. There is no signed tenancy agreement between the parties.

When she moved in, a condition inspection report was not done with her. She gave the landlord 28 post dated cheques for \$1,200.00 as assurance her rent would not increase for at least 28 months. When the tenancy ended on February 28, 2019, the remainder of the cheques for rent were returned to her, however the landlord did not return her cheque for the security deposit, \$600.00.

The parties agree the rental unit was returned in good condition and together signed a mutual agreement to that effect on February 28th. On that same day, the tenant sent the landlord written notice of her forwarding address by Canada Post xpresspost. Copies of the forwarding address letter and signed confirmation of delivery dated March 5, 2019 was provided as evidence by the tenant.

The tenant testified she paid her share of the hydro and the natural gas for the rental unit which is not disputed by the landlord. The tenant testified she was not responsible for paying for any water utility.

The landlord provided the following testimony. When the tenant moved in, the unit was in good condition and was in good condition when she moved out. At the end of the tenancy, a condition inspection report was not necessary due to no damage. When the tenant moved out, 22 uncashed cheques were returned to the tenant, however they were waiting for a final bill from the city to determine how much the tenant was responsible for paying.

The landlord testified he asked the tenant to wait for a reduced security deposit back as they would deduct the unpaid water utility from it. The landlord estimates the water should be approximately \$40.00 per month, so the tenant owes him \$240.00 in water utility.

The landlord submits that the reason there is no signed tenancy agreement with the tenant is because the tenant was always planning on moving out. A tenancy agreement was given to the tenant to sign, however she never did so. The tenant disputes this, saying none was ever presented to her for signature.

Analysis

Section 13(1) of the *Act* states a landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004. Section 13(2)(vi) states a tenancy agreement must comply with any requirements prescribed in the regulations and must set out which services and facilities are included in the rent. Pursuant to section 13(3), within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

The landlord submits that water was not included in the rent, that the tenant was required to pay extra for it. In the absence of a tenancy agreement to indicate the rent excluded water, the landlord has no right to hold the tenant responsible for paying it. While section 46 of the *Act* allows the landlord to apply to end tenancy when a tenant fails to pay utilities *under a tenancy agreement*, the landlord does not have any authority to unilaterally deduct what he estimates a utility will be from a tenant's security deposit.

Section 38(1) of the *Act* states the landlord's responsibilities at the conclusion of a tenancy, reproduced below.

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.

If the landlord does not comply with section 38(1) of the *Act*, section 38(6) of the *Act* applies.

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. [emphasis added]

The parties agree the tenancy ended on February 28, 2019. The tenant has given undisputed evidence that the landlord was provided with her forwarding address on March 5, 2019 by Canada Post xpresspost with signature delivery. I find the landlord was served with it on that date in accordance with sections 88 and 90 of the *Act*.

As the landlord has not returned the tenant's security deposit or made a claim it within 15 days of the date the tenancy ended and receiving the tenant's forwarding address, the landlord did not comply with section 38 of the *Act*. Section 38(1)(b) requires that the security deposit of \$600.00 be doubled to \$1,200.00. I award the tenant a monetary order in that amount.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,300.00. 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: June 29, 2019

Residential Tenancy Branch