



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on February 14, 2019 (the “Application”). The Tenant applied for return of double the security deposit and reimbursement for the filing fee.

The Tenant appeared at the hearing. The Landlord appeared at the hearing with the Witness who exited the call until required.

The Landlord had submitted a Monetary Order Worksheet seeking compensation. I advised the Landlord she needs to file her own Application for Dispute Resolution if she believes she is entitled to compensation and that I would not consider this.

I explained the hearing process to the parties who did not have questions when asked. The parties and Witness provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlord confirmed she received the hearing package and Tenant’s evidence.

The Tenant confirmed he received the Landlord’s evidence. He testified that he received it late. He confirmed he had a chance to review it but said he did not have a chance to respond to it. I asked the Tenant what evidence he had wanted to submit in response. He said he wanted to submit photos of the rental unit showing the condition of it at the start of the tenancy.

I explained to the parties that the condition of the rental unit at the start or end of the tenancy is not actually an issue on the Application. Given this, the Tenant agreed he was content with proceeding despite the late evidence.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence pointed to during the hearing and all oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The agreement was between the Landlord, co-landlord, Tenant and four additional co-tenants. The tenancy started September 01, 2017 and was a fixed term tenancy ending August 31, 2018. Rent was \$2,400.00 per month due on the first day of each month. The tenants paid a \$1,200.00 security deposit.

The parties agreed the tenancy ended August 31, 2018.

The Tenant testified that he provided a forwarding address in writing via letter to the Landlord which was mailed September 21, 2018. The letter was in evidence. The Landlord acknowledged receiving the letter by mail. She did not know when she received it but thought she received it a week and a half after September 21, 2018.

The parties agreed on the following. The landlords did not have an outstanding monetary order against the tenants at the end of the tenancy. The tenants did not agree in writing at the end of the tenancy that the landlords could keep some or all of the security deposit. The landlords did not apply to the RTB to keep the security deposit.

The parties agreed that a move-in inspection was done and someone for the landlords and someone for the tenants participated in this.

The Landlord testified that the Witness and one of the tenants did a move-out inspection. The Tenant testified that one of the tenants did a move-out inspection but could not say whether the Witness was there or not.

The Landlord testified that nobody for the tenants signed the move-out Condition Inspection Report. She submitted that this entitled her to keep the security deposit. She could not point to where in the *Residential Tenancy Act* (the “Act”) it states this.

The Tenant agreed that nobody for the tenants signed the move-out Condition Inspection Report.

The Witness testified as follows. He signed the move-out Condition Inspection Report. He did the move-out inspection over three days with one of the tenants. At first, he said the tenant signed the Condition Inspection Report. He then said he was not sure if the tenant signed the Condition Inspection Report.

The remainder of the testimony of the parties is not relevant to this decision.

Analysis

Section 38 of the *Act* sets out the obligations of landlords in relation to a security deposit held at the end of a tenancy and states:

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(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.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].

(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...

Sections 24 and 36 of the *Act* address extinguishment and state:

24 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord has complied with section 23 (3) [2 opportunities for inspection], and

(b) the tenant has not participated on either occasion.

36 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord complied with section 35 (2) [2 opportunities for inspection], and

(b) the tenant has not participated on either occasion.

The parties agreed the tenancy ended August 31, 2018. The Landlord acknowledged receiving the forwarding address in writing via letter. She did not know when she received the letter but thought she did a week and a half after September 21, 2018. For the purposes of this decision, I accept that the Landlord received the forwarding address around October 02, 2018.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from October 02, 2018 to either repay the security deposit or file a claim with the RTB claiming against it. Given the testimony of the parties, there is no issue that the Landlord did neither.

I do not find that the exceptions to section 38(1) of the *Act*, as set out in section 38(2) to 38(4) of the *Act*, apply in this case.

The parties agreed that a move-in inspection was done and someone for the landlords and someone for the tenants participated in this. Given someone for the tenants participated, the tenants did not extinguish their rights in relation to the security deposit under section 24 of the *Act*.

There is no issue that one of the tenants participated in the move-out inspection as the Landlord, Tenant and Witness all testified that this occurred. Given one of the tenants

participated, the tenants did not extinguish their rights in relation to the security deposit under section 36 of the *Act*.

I do not accept that the tenant failing to sign the move-out Condition Inspection Report resulted in the tenants extinguishing their rights in relation to the security deposit under section 36 of the *Act* as this section simply requires participation in the move-out inspection and does not require the tenant to sign the Condition Inspection Report.

Given the above, section 38(2) of the *Act* does not apply.

The parties agreed that the landlords did not have an outstanding monetary order against the tenants at the end of the tenancy. Therefore, section 38(3) of the *Act* does not apply.

The parties agreed that the tenants did not agree in writing at the end of the tenancy that the landlords could keep some or all of the security deposit. Therefore, section 38(4) of the *Act* does not apply.

I find the Landlord failed to comply with section 38(1) of the *Act*. I find that none of the exceptions in section 38(2) to 38(4) of the *Act* apply. Therefore, pursuant to section 38(6) of the *Act*, the Landlord is not permitted to claim against the security deposit and must return double the security deposit to the Tenant.

The Landlord must return \$2,400.00 to the Tenant. No interest is owed on this as the interest owed has been 0% since 2009.

As explained during the hearing, the state of the rental unit is not relevant to the issues raised in the Application. If the Landlord thought the rental unit was left dirty or damaged, she was required to file an Application for Dispute Resolution claiming against the security deposit within the applicable time limit.

As the Tenant was successful in this application, I award him reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to a Monetary Order in the amount of \$2,500.00.

Conclusion

The Tenant is entitled to a Monetary Order in the amount of \$2,500.00 and I grant the Tenant a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with this Order, the 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 *Act*.

Dated: June 05, 2019

Residential Tenancy Branch