



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by the Tenant for the return of double the security deposit and to recover the filing fee.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on May 3, 2019. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of double his security deposit?

Background and Evidence

This tenancy started on June 22, 2016 as a one year fixed term tenancy, then renewed on another 7 month fixed term and then after January 31, 2018 the tenancy was on a month to month basis. The tenancy ended March 31, 2019. The Tenant said the rent at the end of the tenancy was \$2,390.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$1,150.00 during the tenancy. The Tenant said condition inspection reports were done at the start and end of the tenancy.

The Tenant said he moved out of the rental unit on March 31, 2019. A move out condition report was completed and the Tenant acknowledged damage to the unit during the tenancy. The Tenant continued to say he thought the damage was normal wear and tear and he did not agree to any deductions from his security deposit. Further the Tenant said he gave the Landlord his forwarding address in writing on the move out condition inspection report dated March 31, 2019. The Tenant continued to say that he text messaged the Landlord a number of times about the return of the security deposit and on April 19, 2019 the Landlord sent the Tenant a cheque for \$492.82 which

represented the amount of security deposit less the cost for damages that the Landlord retained. The Tenant said he did not agree to the Landlord retaining any of his security deposit so he made this application for the return of double his security deposit in the amount of $\$1,150.00 \times 2 = \$2,300.00$ less \$492.82 the amount returned to him. The Tenant said his total claim is for \$1,807.18 plus the \$100.00 filing fee.

The Landlord said that because the Tenant acknowledged the damage done to the rental unit during the tenancy he thought the Tenant would pay for the cost of repairs when the repairs were completed. The Landlord said he was acting in good faith and he thought the Tenant would too. The Landlord said he was surprised when the Tenant said he wanted his full security deposit returned and when the Tenant made this application. The Landlord said he was a new Landlord and did not understand all the responsibilities a landlord has under the Act. The Landlord continued to say he tried to mitigate the cost of the repairs by getting low quotes and doing some work himself, so he believes the \$657.18 that he retained from the security deposit was reasonable.

The Landlord continued to say that the move out condition inspection report completed March 31, 2019 is not correctly completed as the Tenant was in a rush so they hurried the walk through.

The Tenant said they had a full ½ hour to do the report.

The Landlord continued to say he has not made an application to the Residential Tenancy Branch to retain the Tenant's security deposit and he does not have a written agreement from the Tenant to retain all or some of the security deposit. The Landlord said that because the Tenant acknowledged the damage in the unit he thought he could retain whatever the costs were to fix the damage. The Landlord said he thought he was acting in good faith.

The Tenants said he is applying for the return of double the security deposit less what has been paid as the Landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

The Landlord asked the Tenant if he would reduce his claim on a good faith basis.

The Tenant declined to reduce his claim.

Analysis

Section 38 (1) says that 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.

And Section 38 (6) says 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.**

I accept from the Tenant's testimony that he gave the Landlord a forwarding address in writing on March 31, 2019. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or after receiving a forwarding address in writing from the Tenant, nor did the Landlord apply for dispute resolution. Consequently, I find for the Tenant and award the Tenant double the security deposit of \$1,150.00 in the amount of \$2,300.00 less the amount returned to the Tenant of \$492.82 for a total amount of \$1,807.18.

Further as the Tenant has been successful in this matter I order the Tenant to recover the filing fee of \$100.00 from the Landlord. A monetary order is granted to the Tenant for \$1,907.18.

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38, 67 and 72 of the Act, I grant a Monetary Order for \$1,907.18 to the Tenant. The order must be served on the Respondent and is enforceable through the Provincial Court 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: July 29, 2019

Residential Tenancy Branch