



Dispute Resolution Services

Page: 1

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 Tenants on April 16, 2019 (the “Application”). The Tenants applied for return of double the security and pet damage deposits. The Tenants sought reimbursement for the filing fee.

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

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

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. Are the Tenants entitled to return of double the security and pet damage deposits?
2. Are the Tenants 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 tenancy started November 01, 2014 and was a month-to-month tenancy. The Tenants paid a \$1,250.00 security deposit and \$100.00 pet damage deposit. Clause 8 of the tenancy agreement states:

8. The Landlord acknowledges receipt from the Tenant of the sum of \$1,250.00 as a security deposit...The following terms shall apply to the deposit:

(a) ...

(b) If the Landlord claims any portion of the security deposit, he/she shall give to the Tenant a written accounting for the claim in the form prescribed by the applicable act dealing with Landlord and Tenant matters within 15 – 30 days of the Tenant's departure from the premises...

The parties agreed the tenancy ended March 31, 2019.

Tenant G.B. testified that the Tenants provided the Landlords their forwarding address in a note left in the rental unit March 31, 2019. The Landlords had submitted a copy of this note. The Landlords acknowledged receiving this note April 01, 2019.

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 or pet damage deposits.

The Landlords acknowledged that they did not apply to the RTB to keep the security or pet damage deposits.

Landlord M.G. pointed to clause 8 in the tenancy agreement. I understood her to say the Landlords had 15 to 30 days to return the deposits. Landlord M.G. also referred to waiting to ensure the Tenants had paid the hydro bill before returning the deposits.

Landlord M.G. testified that a move-in inspection was done and that the Tenants participated in this. Tenant W.B. testified that no move-in inspection was done and that the Tenants were not offered two opportunities to do a move-in inspection.

The Landlords testified that no move-out inspection was done. They said the Tenants would not let the Landlords talk to them. The Landlords testified that they offered the Tenants two opportunities to do an inspection verbally.

The Tenants agreed no move-out inspection was done. The Tenants denied that they were offered two opportunities to do a move-out inspection.

Analysis

Section 38 of the *Act* sets out the obligations of landlords in relation to security and pet damage deposits 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...

Under the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"), landlords are required to offer tenants two opportunities to do move-in and move-out inspections and the second opportunity must be provided on a notice in the approved form.

The parties agreed the tenancy ended March 31, 2019. The Landlords acknowledged receiving the Tenants' forwarding address in writing April 01, 2019. I find April 01, 2019 to be the relevant date for the purposes of section 38(1) of the *Act*. Pursuant to this section, the Landlords had 15 days from April 01, 2019 to either repay the security and pet damage deposits or file a claim with the RTB claiming against these. There is no issue that the Landlords did neither.

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

The parties gave conflicting testimony about whether a move-in inspection was done. However, I find the Tenants did not extinguish their rights in relation to the security or pet damage deposits under section 24 of the *Act* regardless of which version of events I accept.

In relation to the move-out inspection, both parties agreed one was not done. The Landlords testified that they verbally offered the Tenants two opportunities to do an inspection. The Tenants denied this. I do not find it necessary to decide whether this was done or not as providing two opportunities verbally is not sufficient in any event. The *Regulations* require the second opportunity to be in writing on the notice in the approved form. There is no issue that the Landlords did not do this. Therefore, the Tenants did not extinguish their rights in relation to the security or pet damage deposits under section 36 of the *Act*.

Given the above findings, section 38(2) of the *Act* does not apply in this case. The parties agreed 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 in this case.

The parties agreed the Tenants did not agree in writing at the end of the tenancy that the Landlords could keep some or all of the security or pet damage deposits. Therefore, section 38(4) of the *Act* does not apply in this case.

The Landlords failed to comply with section 38(1) of the *Act*. None of the exceptions in sections 38(2) to 38(4) of the *Act* apply. Therefore, pursuant to section 38(6) of the *Act*, the Landlords are not permitted to claim against the security or pet damage deposits and must return double the security and pet damage deposits to the Tenants.

I acknowledge clause 8 of the tenancy agreement. I understood Landlord M.G. to state that this clause allows the Landlords 15 to 30 days to return the security and pet damage deposits. I do not find clause 8 clear on this point; however, if it does purport to change the requirements in section 38 of the *Act* it is of no effect pursuant to section 5 of the *Act* which states:

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

I also note that the Landlords were not permitted to keep the security and pet damage deposits past the 15-day time limit without claiming against them based on outstanding bills. The Landlords had two options after receiving the Tenants' forwarding address, to return the deposits in full or to claim against them as permitted under the *Act*. It was not open to the Landlords to keep the deposits until the hydro bill was paid.

The Landlords submitted evidence of damage to the rental unit. As explained to the Landlords during the hearing, damage to the rental unit is not an issue on this Application. If the Landlords believed the Tenants owed them compensation at the end of the tenancy, they were required to file an Application for Dispute Resolution with the RTB claiming against the deposits. I also note sections 24 and 36 of the *Act* in relation to the Landlords extinguishing their rights in relation to the security and pet damage deposits.

The Landlords must return \$2,700.00 to the Tenants. No interest is owed on this as the interest owed has been 0% since 2009.

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

In total, the Tenants are entitled to a Monetary Order in the amount of \$2,800.00.

Conclusion

The Tenants are entitled to a Monetary Order in the amount of \$2,800.00 and I issue the Tenants a Monetary Order in this amount. This Order must be served on the Landlords as soon as possible. If the Landlords fail 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: August 01, 2019

Residential Tenancy Branch