



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ARCHITRAVE DEVELOPMENTS
INC. and [tenant name suppressed to protect privacy]

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 June 07, 2019 (the "Application"). The Tenant applied for return of the security deposit and reimbursement for the filing fee.

The Tenant appeared at the hearing. The Agent for the Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Agent for the Landlord confirmed the correct name of the Landlord and this is reflected in the style of cause.

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

The Tenant advised at the hearing that she was seeking double the security deposit if I find the Landlord failed to comply with the *Residential Tenancy Act* (the "Act").

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. It is between the Landlord, Tenant and a co-tenant in relation to the rental unit. The tenancy started February 01, 2018 and was for a fixed term ending January 31, 2019. The tenancy then became a month-to-month tenancy. The tenants paid a security deposit of \$900.00. The agreement is signed for the Landlord and by the Tenant.

The parties agreed the tenancy ended February 28, 2019.

The Tenant testified that her forwarding address was provided to the Landlord in a letter dated March 12, 2019 on March 12, 2019. The letter is in evidence. The Agent acknowledged that the Landlord received this letter on March 12, 2019.

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

The Tenant testified that the Landlord returned \$669.24 of the security deposit on April 01, 2019. The Agent agreed the Landlord returned \$669.24 of the security deposit. The Agent testified that the Landlord tried to e-transfer the money but that this did not work and so sent a cheque. The Agent testified that the first attempts to return the \$669.24 were made within the first two weeks.

The Agent testified that a formal move-in inspection was not done. The Agent testified that this was not a situation where the Tenant was offered two opportunities to do a move-in inspection but did not participate. The Tenant testified that no move-in inspection was done.

The Agent testified that the Landlord tried to do a move-out inspection with the Tenant but that the Tenant never showed up. The Agent testified that the Tenant was not offered a second opportunity to do the inspection on the RTB form. The Tenant testified that the Landlord did a move-out inspection but that she did not do the inspection with the Landlord.

Analysis

Section 38 of the *Act* sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit or file a claim against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

Given the testimony of the parties, I accept that the Tenant provided the Landlord with a forwarding address on March 12, 2019. Given the agreement of the parties, I accept the tenancy ended February 28, 2019.

March 12, 2019 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from March 12, 2019 to repay the security deposit in full or file a claim with the RTB against the security deposit.

Given the testimony of the parties, I accept that the Landlord did not return the security deposit in full by March 27, 2019 as the Landlord held back \$230.76 of the security deposit. Given the agreement of the parties, I accept that the Landlord never applied to the RTB to keep any of the security deposit. I find the Landlord failed to comply with section 38(1) of the *Act*.

The exceptions in sections 38(2) to 38(4) of the *Act* are as follows:

(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...

Given the testimony of the parties, I find the Tenant was not provided a second opportunity to do a move-in or move-out inspection on the RTB form. Therefore, the Tenant did not extinguish her rights in relation to the security deposit under sections 24 or 36 of the *Act*. Section 38(2) of the *Act* does not apply.

Given the agreement of the parties, I find neither of the exceptions set out in sections 38(3) or 38(4) of the *Act* apply.

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

Policy Guideline 17 deals with security deposits and states at page three:

5. The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ($\$800 - \$275 = \525).

This example applies here. The \$900.00 security deposit is doubled which equals \$1,800.00. The \$669.24 returned is subtracted to equal \$1,130.76. The Landlord must return \$1,130.76 to the Tenant. There is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

As the Tenant was successful in this application, I award her 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 \$1,230.76.

Conclusion

The Tenant is entitled to a Monetary Order in the amount of \$1,230.76 and I issue 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: September 24, 2019

Residential Tenancy Branch