Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On May 21, 2019, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the "*Act*") and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

S.H. attended the hearing as an advocate for the Tenants; however, authorization was not provided by the Tenants to appoint another party to represent them during this legal proceeding, pursuant to Rule 6.8 of the Rules of Procedure. S.H. contacted Tenant M.H. and had him call into the hearing to provide authorization for her to act on their behalf. Tenant M.H. confirmed that he authorized S.H. to represent them during this hearing. As the phone number that Tenant M.H. called from was identical to the one he provided on their Application, I was satisfied that this was the Tenant and that this constituted his authorization to have S.H. appear as their representative in this matter. Both the Landlords also attended the hearing. All in attendance provided a solemn affirmation.

S.H. advised that the Notice of Hearing and evidence package was served to each Landlord by registered mail on May 27, 2019 and the Landlords confirmed receipt of these packages. In accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlords were served the Notice of Hearing packages. However, the Landlords solemnly affirmed that they did not receive any evidence with the Notice of Hearing packages and S.H. solemnly affirmed that she included this evidence. Given that there are clearly contradictory submissions with respect to this point, in the absence of any proof that this evidence was served, I have excluded the Tenants' evidence and it will not be considered when rendering this decision. S.H. was permitted to provide testimony with respect to this evidence during the hearing, however.

The Landlords advised that their first evidence package was served to the Tenants by registered mail on August 3, 2019, that this evidence contained digital evidence, and that they did not confirm if the Tenants could view this digital evidence pursuant to Rule

3.10.5 of the Rules of Procedure. S.H. confirmed receipt of this package, that she was able to view the digital evidence, and that she was prepared to respond to it. Despite the Landlords not confirming if the Tenants could view the digital evidence as per Rule 3.10.5, as S.H. was prepared to respond to it, I have accepted it and will consider this evidence when rendering this decision.

Furthermore, the Landlords advised that their second evidence package was served to the Tenants by registered mail on August 20, 2019 and S.H. confirmed receiving this package. As service of all of the Landlords' evidence complied with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I am satisfied that the Tenants were served with the Landlords' evidence packages. As such, I have accepted this evidence and will consider it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a return of double the security deposit?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on September 1, 2018 and the tenancy ended on April 30, 2019 when the Tenants gave up vacant possession of the rental unit. Rent was established at $1,400.00 per month, due on the first day of each month. A security deposit of $700.00 was paid.

All parties agreed that the Tenants' forwarding address in writing was provided to the Landlords on the move-out inspection report conducted on April 30, 2019. The report was submitted as documentary evidence.

The Tenants are seeking compensation in the amount of **$1,400.00** because the Landlords did not comply with Section 38 of the *Act*.

The Landlords advised that there was a pending hydro bill and the Tenants agreed to wait until this bill arrived before anything would be done with their deposit. Once this bill arrived, they would then deduct the amount of the hydro and other fees from the deposit and return the balance. The reason they did not act sooner is because they were waiting for the hydro bill. They stated that the Tenants approved of this agreement of deductions on the move-out inspection report and they referenced a specific time in the submitted audio clip where the Tenants also made this agreement. The Landlords advised that they did not get a final bill for hydro but estimated the cost of this at $54.22 and deducted this from the security deposit. In addition, the Landlords' position is that the Tenants agreed to this in the signed move-out inspection report as they stated "Once Landlord receive[sic] 2 keys back by tomorrow (May 1,2019), Landlord will return security deposit. Deduct w/ hydro." However, no specific amount was noted on the move-out inspection report with respect to the amount that would be deducted.

Furthermore, without the Tenants' written consent, they also deducted $61.60 for replacement of a compost bin, $11.93 for replacement of broken light bulbs, and $11.74 for replacement of washroom lightbulbs. All of these deductions totalled $139.49, the Landlords deducted this amount from the security deposit, and then they electronically transferred the difference to the Tenants on May 18, 2019, which was rejected by the Tenants.

S.H. advised that there was no intention of any agreement to allow the Landlords to withhold the security deposit until the hydro bill was obtained, and she referenced a specific section of the audio evidence to support this position. As well, she stated that the comment that the Landlords referred to in the move-out inspection report about agreement of deductions was altered after the Tenants signed this report and she emphasized the difference in ink to support this allegation of fraud. She acknowledged that the Tenants refused the Landlords' late electronic transfer.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receives the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlords to retain the deposit. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposit, and the Landlords must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Section 38(4) of the *Act* permits the Landlords "to retain an amount from a security deposit or a pet damage deposit if 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".

Based on the undisputed evidence before me, a forwarding address in writing was provided by the Tenants on April 30, 2019. I find it important to note that Section 38 of the *Act* clearly outlines that once a forwarding address in writing is received, the Landlords must either return the deposit in full ***or*** make an application to claim against the deposit. There is no provision in the *Act* which allows the Landlords to retain a portion of the deposit without the Tenants' written consent.

Regardless of the Landlords' belief of what the intention was or what agreement was made orally, the undisputed evidence is that the Tenants did not provide written authorization for the Landlords to keep any amount of the the security deposit. Furthermore, there was no specific amount listed by the Landlords on the move-out inspection report for the Tenants to even agree to. Moreover, despite the Landlords' position that the only reason for the delay in dealing with the deposit is because they were waiting for the hydro bill to calculate the amount of the deduction, I find it important to note that the hydro deduction that they did make on May 18, 2019 was not even based on a bill but based on their own estimated calculation.

Based on the totality of the evidence before me, I am not satisfied that the Landlords specifically noted how much would be deducted from the deposit, nor did they have any written consent from the Tenants agreeing to this exact amount. Therefore, the Landlords were not permitted to keep any amount of the Tenants' security deposit, and they should have made an Application for Dispute Resolution to claim against the security deposit an amount they believed the Tenants owed them.

As the undisputed evidence before me is that the Landlords did not return the security deposit in full or make an Application to keep a portion of the deposit within 15 days of April 30, 2019, I find that the Landlords illegally withheld a portion of the deposit contrary to the *Act,* and did not comply with the requirements of Section 38.

Consequently, I am satisfied that the Tenants have substantiated a monetary award amounting to double the original security deposit. Under these provisions, I grant the Tenants a monetary award in the amount of **$1,400.00**.

As the Tenants were successful in their claims, I find that the Tenants are entitled to recover the $100.00 filing fee paid for this application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Doubling of the security deposit	$1,400.00
Recovery of filing fee	$100.00
TOTAL MONETARY AWARD	**$1,500.00**

Conclusion

The Tenants are provided with a Monetary Order in the amount of **$1,500.00** in the above terms, and the Landlords must be served with **this Order** as soon as possible. Should the Landlords 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: September 10, 2019

Residential Tenancy Branch