



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application pursuant to section 38 of the *Residential Tenancy Act* (the *Act*) for authorization to obtain a return of double their security deposit. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As Landlord AS (the landlord) confirmed that they received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on May 30, 2019, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of their security deposit? Is the tenant entitled to a monetary award equivalent to the amount of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Background and Evidence

On October 3, 2018, the parties signed a month-to-month tenancy agreement that was to enable the tenant to commence occupying the rental unit as of November 1, 2018. Monthly rent was set at \$1,850.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$925.00 security deposit paid on October 3, 2018.

On April 1, 2019, the tenant gave the landlord notice of their intention to end this tenancy by April 31, 2019. The parties agreed that the tenant surrendered vacant possession of the rental unit to the landlord on April 31, 2019.

The tenant's May 22, 2019 application for a monetary award of \$1,850.00 sought an amount equivalent to double their security deposit. The tenant maintained that the landlord had failed to abide by the provisions of section 38 of the *Act* as the landlord had not yet returned their security deposit to the tenant. The tenant entered into written evidence a copy of their May 2, 2019 email advising the landlord of their forwarding address for the return of their security deposit.

The landlord gave sworn testimony that a joint move-in condition inspection was conducted when this tenancy began; the tenant said that no such inspection occurred. The parties agreed that the landlord did not produce a report of a joint move-in condition inspection and did not provide the tenant with a copy of any such report. The parties agreed that no joint move-out condition inspection of the premises occurred when this tenancy ended, so no report of any such inspection was undertaken by the landlord.

The landlord entered written evidence that damage occurred during the course of this tenancy. The landlord confirmed that they have not initiated any application for a monetary award against the tenant.

Analysis

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. The parties agreed that no joint move-in condition inspection report was created by the landlord at the beginning of this tenancy and that no joint move-out condition inspection was requested by the landlord nor conducted, and no move-out inspection report was issued by the landlord.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 23 of the *Act* reads in part as follows:

23 (4) *The landlord must complete a condition inspection report in accordance with the regulations.*

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations...

Section 24(2) of the *Act* reads in part as follows:

Consequences for tenant and landlord if report requirements not met

24 (2) *The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...

Sections 35 and 36 of the *Act* establish similar provisions regarding a joint move-out condition inspection and the report to be produced by the landlord regarding that inspection.

Based on the evidence before me, the landlord's right to apply to retain the tenant's security deposit was extinguished shortly after this tenancy began.

Section 38 of the *Act* requires the landlord to either return all of a tenant's deposits or file for dispute resolution for authorization to retain a deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur or if the landlord applies to retain the deposits within the 15 day time period but the landlord's right to apply to retain the tenant's deposit had already been extinguished, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the deposits. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy.

In this case, I find that the tenant has not provided the landlord with a forwarding address for the return of the security deposit in writing, as the May 2, 2019 email as well as the notice of dispute resolution do not qualify as written notice of the tenant's address for the purpose of returning the security deposit.

At the hearing, I confirmed that the landlord has the tenant's correct mailing address for the return of the tenant's security deposit.

Pursuant to paragraph 71(2)(b) of the *Act*, I order that the landlord has now been served with the forwarding address by the tenant as of September 5, 2019, the date of this hearing. Since the landlord's rights to apply to retain any portion of the tenant's security deposit have been extinguished, the landlord must return the tenant's security deposit in full within 15 days of today's date.

I dismiss the tenant's application with leave to reapply. The tenant is at liberty to reapply if the landlord does not return the tenant's \$925.00 security deposit in full within 15 days of today's date. As mentioned during the hearing, the landlord's failure to return the full security deposit to the tenant within 15 days could lead to the issuance of an order by an arbitrator appointed pursuant to section 38(6) of the *Act* in an amount that is double the value of the security deposit, plus potentially the recovery of the tenant's application filing fee.

At the hearing, the parties agreed that the landlord would return the tenant's security deposit in full by e-transfer of funds to the tenant. The landlord confirmed that they had the tenant's email address for the purpose of completing this e-transfer of funds.

Conclusion

The tenant's application is dismissed with leave to reapply.

As the landlord has been served with the tenant's forwarding address as of September 5, 2019, the landlord has 15 days to return the tenant's security deposit in full.

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 05, 2019

Residential Tenancy Branch