



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- A return of the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service of documents was confirmed. The landlord confirmed receipt of the tenant's materials. The landlord testified that they had not served any evidence on the tenant. Based on the testimonies I find that the landlord was served with the tenant's materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a return of the security deposit for this tenancy?

Is the tenant entitled to recover their filing fee from the landlord?

Background and Evidence

This periodic tenancy began in November 2018. The tenant paid a security deposit of \$375.00 at the start of the tenancy. The tenancy ended on April 30, 2019. No condition inspection report was prepared at any time for this tenancy.

The tenant gave written notice to end the tenancy along with their forwarding address by a text message on April 9, 2019. The tenant also authorized the landlord to retain \$125.00 of the security deposit and requested a return of \$250.00 after the tenancy ended. The text message reads:

Money to be sent - $\$375 - (10\text{day} * (\$375/30\text{days})) = \$250$. please send this amount (\$250) as soon as possible

The landlord testified that they returned \$110.00 of the security deposit to the tenant and currently hold \$140.00 that was not agreed to by the parties. The tenant submits that they received only \$108.00 as there was a transfer charge of \$2.00 incurred through their financial institution. Neither party submitted any documentary evidence of the transfer of funds.

Despite giving written authorization that the landlord may retain \$125.00 of the security deposit in their text message of April 9, 2019, and having received a return of \$108.00 the tenant now claims a monetary award of \$375.00 the full amount of the security deposit.

The landlord testified that they have not filed an application for dispute resolution but feel entitled to retain the balance of the deposit as the tenant did not provide sufficient notice to end the tenancy.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receiving a forwarding address in writing. If that does not occur, the landlord must pay a monetary award pursuant to section 38(6) of the *Act* equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit.

I find that the text message of April 9, 2019 sent by the tenant to the landlord is a clear and unambiguous authorization by the tenant that the landlord may retain \$125.00 of the security deposit. The tenant requests the landlord return only the amount of \$250.00. I find that the landlord received written authorization that they may retain \$125.00 of the security deposit for this tenancy.

The parties agree that the landlord returned some funds from the remaining balance to the tenant. The landlord submits they returned \$110.00 while the tenant says that they received only \$108.00 as the financial institution deducted a fee.

The onus to prove their claim on a balance of probabilities lies with the party making the claim. In the absence of any documentary evidence showing that they only received \$108.00, I find that the tenant has not established their position on a balance of probabilities. Based on the testimonies I find that the landlord returned the sum of \$110.00 to the tenant.

Based on my findings above I find that there is a balance of \$140.00 of the security deposit which the landlord retains without the authorization of the tenant.

I accept the evidence of the parties that this tenancy ended on April 30, 2019 and the tenant gave the landlord the forwarding address in writing before that date. The landlord did not return the full security deposit to the tenant nor did they file an application for dispute resolution for authorization to retain the deposit within 15 days of the tenancy ending as provided under the *Act*.

While the landlord gave some evidence that they felt entitled to the deposit as the tenant failed to provide sufficient notice, the tenant's violation of the tenancy agreement does not grant a landlord authorization to retain the deposit without taking the appropriate legislative steps. A landlord is not permitted to simply deduct from a security deposit on the basis of what they feel they are entitled to without following the *Act*.

Furthermore, the parties gave evidence that no condition inspection report was prepared at any time during this tenancy. Section 24 of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if they do not comply with the requirements of section 35 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

Based on the evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a \$280.00 Monetary Order,

double the amount of the security deposit held without authorization by the landlord. No interest is payable over this period.

As the tenant was successful in their application, they are entitled to recovery of the \$100.00 filing fee.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$380.00 against the landlord. The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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 6, 2019

Residential Tenancy Branch