



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for authorization to obtain a return of all or a portion of the security deposit pursuant to section 38.

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. The tenant was primarily represented by their family member who acted as agent (the "tenant"). The landlord represented themselves with assistance.

As both parties were present service was confirmed. The parties each confirmed receipt of the other's materials. Based on the testimonies I find that each party was served with the respective 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?

Background and Evidence

The parties agreed on the following facts. This tenancy ended in July 2018. A security deposit of \$925.00 was paid at the start of the tenancy. No condition inspection report was prepared at any time for this tenancy.

The parties agree that the tenants provided a forwarding address to the landlord by a letter dated June 6, 2019. The tenant submits that they did not give authorization that the landlord may retain any portion of the security deposit.

The landlord submits that there was an arrear at the end of the tenancy for unpaid utilities that exceeded the amount of the security deposit. The landlord said they retained the security deposit for the arrear amount. The landlord submitted into evidence copies of utility bills and the tenancy agreement.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) 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 permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the evidence of the parties that the tenant provided a forwarding address in writing by letter dated June 6, 2019. I accept the evidence that the tenant did not authorize the landlord to retain any portion of the security deposit. I further accept the evidence that the landlord has not returned the security deposit in full nor have they filed an application for dispute resolution for authorization to retain the deposit.

The landlord made reference to outstanding utilities but I find this to be irrelevant to the matter at hand. The landlord has not filed an application for authorization to recover any cost of repairs from the security deposit. The undisputed evidence of the parties is that the tenant has not authorized the landlord to deduct any amount.

If the landlord had concerns about utility arrears at the end of the tenancy and sought to recover their losses from the security deposit they ought to have filed an application for dispute resolution in accordance with the *Act*. A landlord cannot simply withhold any portion of the security deposit for a tenancy without following the appropriate legislative steps. I find that the landlord has failed to return the security deposit of \$925.00 for this tenancy to the tenant without the tenant's authorization or filing an application to claim against the deposit.

Furthermore, the parties gave evidence that no condition inspection report was prepared at any time during the 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 23 in completing a condition inspection report in accordance with the regulations.

Based on the undisputed 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 of the receiving a forwarding address in June 2019. 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 an \$1,850.00 Monetary Order, double the \$925.00 security deposit. No interest is payable over this period.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1,850.00 against the landlord, allowing them to recover double the security deposit.

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 30, 2019

Residential Tenancy Branch