



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNDCT MNSD**

Introduction

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

- Authorization to recover the filing fees from the landlord pursuant to section 72;
- A monetary order for damages or compensation pursuant to section 67; and
- An order for the return of a security deposit or pet damage deposit pursuant to section 38.

The tenants attended the hearing represented by the lead tenant, EE ("tenant"). The landlords attended the hearing represented by the landlord, AJ ("landlord"). As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's original Application for Dispute Resolution Proceedings Package but does not acknowledge receiving the tenant's amendment dated September 12th. The tenant testified he served the amendment by registered mail on September 12th and provided a tracking number as proof. The tracking number is provided on the cover page of this decision. I am satisfied the tenant served the amendment in accordance with sections 88 and 90 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a doubled return of the security deposit and other fees?
Can the tenant recover the filing fee?

Background and Evidence

A copy of the tenancy agreement was provided as evidence by the tenant. This tenancy began on November 1, 2018 for a fixed term ending May 1, 2019. Rent was set at \$4,000.00 per month. A security deposit of \$2,000.00 was collected at the commencement and is still being held by the landlord. Term 17 of the tenancy agreement stipulates:

Within the time period required by the *Act* and after the termination of this tenancy, the Landlord will deliver or mail the Security Deposit less any proper deductions or with further demand for payment to [tenant's email address] or at such other place as the Tenant may advise.

The parties agree that a walkthrough was done at the beginning of the tenancy but no formal condition inspection report was prepared, signed or distributed to the parties.

The tenancy ended on May 1, 2019. The landlord testified that she asked the last remaining tenant CB to give her a call to arrange for a moveout inspection and the tenant failed to do so. The other tenants on the tenancy agreement had already moved on.

The tenant EE testified that he sent the landlord his forwarding address by regular mail on May 10, 2019. He followed that up by sending the landlord an email on May 21st to advise her that the forwarding address was sent. On June 6th, the tenant re-sent a copy of his forwarding address letter to the landlord as an email attachment. The landlord acknowledges receiving the tenant EE's forwarding address some time in June. The landlord did not file an application with the Residential Tenancy Branch to retain the security deposit or to be compensated for damages to the rental unit.

The tenant testified he was required to keep his Canadian bank account open to facilitate the electronic money transfer for the security deposit and seeks recovery of his monthly Canadian bank fees from the landlord. He testified that upon reflection, arrangements to have the security deposit returned to the last remaining co-tenant, CB would have sufficed. The tenant also seeks recovery of disbursements for mail as well as the filing fee for this application.

Analysis

At the commencement of the tenancy, the landlord did not pursue a condition inspection of the suite with the tenants, as required by section 23 of the *Act*. Pursuant to section 24, the landlord's right to claim against the security deposit is extinguished if the landlord does not offer the tenant at least two opportunities for inspection.

Section 38(5) and (6) of the *Act* state that when the landlord's right to claim against the security deposit is extinguished, the landlord may not make a claim against it and must pay the tenant double the amount of the security deposit or pet damage deposit, or both, as applicable. This is further clarified in Residential Tenancy Branch Policy Guideline PG-17 which says, in part C-3:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, **the arbitrator will order the return of double the deposit** if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing.

Further, section 35(2) of the *Act* states that the landlord must offer the tenant at least 2 opportunities, as prescribed, for a condition inspection at the end of a tenancy.

Residential Tenancy Regulation 17 requires **the landlord** offer the tenant their second opportunity to schedule a condition inspection if the tenant is not available for the first offered time. Section 36(2) of the *Act* states that the right of the landlord to claim against the security deposit **is extinguished** if the landlord does not comply with section 35(2) [2 opportunities for inspection].

Lastly, Section 38 of the *Act* provides that within 15 days after the later of

- a) the date the tenancy ends, and
- b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
- c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

In the case before me, the landlord did not comply with the *Act* in several respects. First, she failed to sign a condition inspection report with the tenant at the beginning of the tenancy. Second, she failed to offer an opportunity in writing for a condition inspection report to be conducted at the end of the tenancy. Lastly, she did not return the security deposit within 15 days of receiving the forwarding address of the tenant. For these reasons, the landlord's entitlement to claim against the security deposit was extinguished and the tenant is entitled to a doubled security deposit. I award the tenant **\$4,000.00** in accordance with sections 38 and 67 of the *Act*.

The tenant has not provided sufficient evidence to show he had no alternatives to keeping his Canadian bank account open to receive the security deposit back. The tenant has not shown any evidence of mitigating his loss by opening a low-cost or free Canadian bank account to facilitate the electronic transfer of the security deposit. I dismiss this portion of the tenant's claim.

Pursuant to section 72 of the *Act*, the only fees an arbitrator can award is the fee paid under section 59(2)(c) to start the proceeding and I award the tenant **\$100.00**. The tenant's application to recover disbursement fees for mailing of documents is dismissed.

Conclusion

I issue a monetary order in the tenants' favour in the amount of **\$4,100.00**.

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: October 21, 2019

Residential Tenancy Branch