



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for the return of the security deposit.

The Tenant was present for the hearing and although he had an agent present at the start of the hearing, the agent did not stay and did not participate in the hearing. Three agents for the Landlord were also present (the “Landlords”). The Landlords confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Landlord did not submit any evidence prior to the hearing.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and ask questions.

I have considered all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

The Tenant named two individuals and one company name as the Landlord/Respondent on the Application for Dispute Resolution. However, at hearing the agents confirmed that the company name was the Landlord for which they are agents. Although the Tenant disputed this, I accept the affirmed testimony of the agents and find that the Landlord should be named as the corporate landlord only. Therefore, I amend the application to remove the names of the agents. This amendment was made pursuant to Section 64(3)(c) of the *Act*.

Issues to be Decided

Is the Tenant entitled to the return of the security deposit?

Background and Evidence

The Landlords testified that the tenancy began on March 20, 2013. They were unsure as to the end date of the tenancy but stated that it ended after service of an Order of Possession received through a dispute resolution proceeding that took place on February 14, 2019. They stated that rent at the end of the tenancy was \$450.00 and that the Tenant paid a security deposit of \$187.50 at the start of the tenancy, which was half of the rent of \$375.00 at the time.

The Tenant agreed that the tenancy started on March 20, 2013 and stated that he moved out on March 1, 2019. He also agreed that rent was \$450.00 at the end of the tenancy. However, the Tenant stated that he paid a security deposit of \$197.50 at the start of the tenancy and noted that this was written in the decision from the previous hearing which took place on February 14, 2019.

The parties agreed that the Landlord still holds the security deposit as no amount has been returned to the Tenant.

The Tenant stated that he provided his forwarding address to the Landlord in emails dated March 14, 2019 and March 30, 2019. He submitted copies of email communication with the Landlord into evidence. The Tenant testified that he did not agree to any deductions from the security deposit and stated that there was no move-out inspection. The Tenant noted that he cleaned the rental unit at the end of the tenancy.

The Landlord confirmed receipt of the Tenant's forwarding address through an email dated March 14, 2019. They stated that the Tenant did not agree to any deductions from the security deposit.

The Landlords stated that they had advised the Tenant in the hearing on February 14, 2019 that they would not be returning the security deposit and therefore questioned why the Tenant waited so long to file the application.

The Landlords provided testimony regarding damage to the Tenant's rental unit and amount of money that was spent to bring the rental unit to a standard to be able to rent

the unit again. They confirmed that they did not file an Application for Dispute Resolution regarding claims against the security deposit.

Analysis

As stated in Section 38(1) of the *Act*, a landlord has 15 days from the later date of when the tenancy ends or when the forwarding address is provided in writing to return the deposit or file a claim against it.

Although email is not a method of service under the *Act*, as the Landlords confirmed receipt of the Tenant's forwarding address by email on March 14, 2019, I find that the Tenant's forwarding address was sufficiently served for the purposes of the *Act* on this date, pursuant to Section 71. As the tenancy ended on or around March 1, 2019, I find that the Landlord had 15 days from the later date of March 14, 2019 to comply with Section 38(1) of the *Act*.

The Landlord provided testimony as to why the security deposit was kept, such as repairs and cleaning needed in the rental unit and also noted that the Tenant had been informed at a previous hearing that the deposit would not be returned. However, I note that in accordance with Section 38 of the *Act*, a landlord may only keep the deposit or an amount from the deposit if the tenant agrees in writing, with an order for the Residential Tenancy Branch or if an amount from a previous Order remains unpaid. I do not find any evidence before me that any of these situations apply and therefore find that the Landlord did not have authorization to retain the security deposit. I also note that simply advising the Tenant that the deposit will be kept does not meet the requirements of Section 38 of the *Act*.

As the Landlord was not in compliance with Section 38(1) of the *Act*, I find that Section 38(6) applies as follows:

- (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The parties were not in agreement as to how much was paid for the security deposit and neither party submitted any evidence that would confirm the amount paid. However, the Tenant referenced a previous decision which indicated that an amount was agreed

upon and the Tenant provided the file number of this decision on the Application for Dispute Resolution. Therefore, upon review of this decision, dated February 19, 2019, I find that the parties agreed at the time that the security deposit amount was \$197.50. I do not have any evidence before me that this was incorrect, such as the Landlord's application for a correction to the decision. Therefore, in the absence of evidence that would establish that a different amount was paid, I find that the Tenant paid a security deposit of \$197.50.

Accordingly, pursuant to Section 38(6) of the *Act*, the Tenant is entitled to the return of double the deposit in the amount of \$395.00.

Conclusion

Pursuant to Sections 38 and 67 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$395.00** for the return of double the security deposit. The Tenant is provided with this 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: October 29, 2019

Residential Tenancy Branch