



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on July 26, 2019 (the “Application”). The Tenants applied for return of double the security deposit as well as reimbursement for the filing fee.

The Tenants and Landlord appeared at the hearing. I explained the hearing process to the parties. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the relevant documentary evidence and all oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to return of double the security deposit?
2. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

The parties agreed on the following. There was a written tenancy agreement in this matter. The tenancy started May 01, 2018 and was for a fixed term of one year. The tenancy then became a month-to-month tenancy. Rent was \$2,300.00 per month due on the first day of each month. The Tenants paid a \$1,150.00 security deposit and \$500.00 pet damage deposit.

The parties agreed the tenancy ended June 25, 2019.

Tenant T.K. testified that a forwarding address was provided to the Landlord in a letter sent by regular mail on June 29, 2019. The letter was in evidence. The Landlord acknowledged receiving the letter but could not recall when it was received. The Landlord agreed he most likely received it around July 04, 2019.

The parties agreed on the following. The Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy. The Tenants did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security or pet damage deposits. The Landlord did not apply to the RTB to keep the security or pet damage deposits.

The parties agreed that both did a move-in and move-out "walk-through" together.

The Landlord testified that he held back \$750.00 of the security deposit at the end of the tenancy. The Landlord testified that he returned the remainder of the security deposit approximately five days after the end of the tenancy.

Tenant T.K. agreed the Landlord still holds \$750.00 of the security deposit. Tenant T.K. testified that the Landlord gave back the remainder around July 15, 2019 and did not take issue with the timing of this.

Both parties agreed the Landlord returned the pet damage deposit with the remainder of the security deposit.

Analysis

Section 38 of the *Residential Tenancy Act* (the “*Act*”) sets out the obligations of a landlord in relation to security and pet damage deposits held at the end of a tenancy.

Section 38(1) requires a landlord to return the security and pet damage deposit in full or claim against them within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant’s forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

Given the testimony of the parties, I accept the tenancy ended June 25, 2019.

I accept the testimony of Tenant T.K. that a forwarding address was provided to the Landlord in a letter sent by regular mail on June 29, 2019. The Landlord did not dispute this and agreed he received the letter and agreed it was likely received around July 04, 2019.

I find the forwarding address was sent to the Landlord in accordance with section 88(c) of the *Act*. The Landlord is deemed to have received the letter July 04, 2019 pursuant to section 90(a) of the *Act*.

July 04, 2019 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from July 04, 2019 to repay the deposits in full or file a claim against the deposits.

Given the testimony of the parties, I accept that the Landlord returned the pet damage deposit between July 01, 2019 and July 15, 2019. I find the Landlord complied with section 38(1) of the *Act* in relation to the pet damage deposit.

Given the testimony of the parties, I find the following. The Landlord did not repay the security deposit in full by July 19, 2019. The Landlord returned \$400.00 of the security deposit by July 15, 2019. The Landlord did not file a claim with the RTB claiming against the security deposit by July 19, 2019.

Sections 38(2) to 38(4) of the *Act* state:

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1)

[tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant...

Given the testimony of the parties, I find the Tenants participated in a move-in and move-out “walk-through”. Therefore, the Tenants did not extinguish their rights in relation to the security deposit. Section 38(2) of the *Act* does not apply.

Given the testimony of the parties, I find the Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy. Section 38(3) of the *Act* does not apply.

Given the testimony of the parties, I find the Tenants did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. Section 38(4) of the *Act* does not apply.

Given the above, I find the Landlord failed to comply with section 38(1) of the *Act* in relation to the security deposit and that none of the exceptions outlined in sections 38(2) to 38(4) of the *Act* apply. Therefore, the Landlord is not permitted to claim against the security deposit and must return double the deposit to the Tenants pursuant to section 38(6) of the *Act*.

Policy Guideline 17 deals with security deposits and states at page three:

5. The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy,

the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ($\$800 - \$275 = \525).

The above example applies here. The \$1,150.00 security deposit is doubled which equals \$2,300.00. The Landlord has returned \$400.00 of the security deposit to the Tenants so this amount is deducted. Therefore, the Landlord must return a further \$1,900.00 to the Tenants. There is no interest owed on the security or pet damage deposits as the amount of interest owed has been 0% since 2009.

As the Tenants were successful in this application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants are entitled to \$2,000.00. I issue the Tenants a monetary order for this amount.

Conclusion

The Tenants are entitled to \$2,000.00 and I issue the Tenants a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with the Order, the 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 *Act*.

Dated: November 19, 2019

Residential Tenancy Branch