



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LWZ DEVELOPMENT LTD PARTNERSHIP and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The tenant applied for the return of double their security deposit plus the filing fee.

The tenant, a legal advocate for the tenant KS (advocate), an agent for the landlord SC (agent), a property manager for the landlord TK (property manager) and a witness for the landlord DB (witness) who did not testify, attended the teleconference hearing. All parties except the witness who did not testify were affirmed. The hearing process was explained to the parties and an opportunity to ask questions was provided. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Neither party raised any concerns regarding the service of documentary evidence. I find the parties were sufficiently served as a result.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to both parties. Any order(s) will be emailed to the appropriate party for service, as necessary, on the other party.

Issues to be Decided

- Is the tenant entitled to the return of double their security deposit under the Act?
- Is the tenant entitled to the return of their filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on September 1, 2018 and required vacant possession as of April 30, 2019 for demolition purposes. According to the tenancy agreement, the monthly rent was \$3,400.00 per month and was due on the first day of each month. The tenant confirmed that they paid a security deposit of \$1,700.00 at the start of the tenancy. The parties confirmed that the landlord returned \$1,070.00 of the \$1,700.00 security deposit. The landlord continues to hold the remaining \$630.00 of the tenant's security deposit.

During the hearing, the agent confirmed that they received the tenant's written forwarding address in May 2019 and that the landlord wrote the tenant a cheque in the amount of \$1,070.00. The parties confirmed that the tenant did not give the landlord permission to keep any amount of the \$1,700.00 security deposit. The tenant deposited the \$1,070.00 cheque from the landlord and is claiming double the \$1,700.00 security deposit, plus the filing fee, less the \$1,070.00 returned by the landlord.

The agent confirmed the landlord has not filed a claim against the tenant claiming against the tenant's security deposit. The agent stated that the landlord decided to keep \$630.00 for cleaning and garbage in the rental unit.

The tenant and the advocate presented the tenant's forwarding address submitted evidence in support that the tenant provided their written forwarding address. The tenant has not waived their right to double the return of the security deposit under the Act.

Analysis

Based on the documentary evidence presented and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;

3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Firstly, I find there is no dispute that the tenant vacated the rental unit on April 30, 2019 at the end of the fixed-term tenancy and that in May 2019, the tenant provided their forwarding address to the landlord, which the agent confirmed having been received. The landlord then made the decision to retain \$630.00 of the tenant's \$1,700.00 without permission of the tenant, and without making a claim under the Act against the tenant towards the security deposit. As a result, sections 38(1) and 38(6) of the Act apply and state:

Return of security deposit and pet damage deposit

38(1) Except as provided in subsection (3) or (4) (a), 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.

(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.

[Emphasis added]

Based on the above, I find that the landlord received the tenant's written forwarding address in May of 2019. I also accept that both parties confirmed that the tenant did not give the landlord permission to keep any amount of the security deposit. I also find that the landlord has not filed an application to claim against the tenant's security deposit. Therefore, I find the landlord breached section 38(1) of the Act by failing to return the security deposit in full to the tenant within 15 days of May 2019, even if I use the last day of May being May 31, 2019. Having considered that the landlord also failed to make a claim against the tenant's security deposit within 15 days of May 31, 2019, and did not have permission to retain the \$630.00 portion withheld by the landlord, I find the tenant is entitled to the return of **double** the original security deposit of \$1,700 for a total of \$3,400.00, less the \$1,070.00 already returned by the landlord, for a total amount of **\$2,330.00**. I note that the tenant's security deposit accrued \$0.00 in interest since the start of the tenancy. I also note that the landlord did not have a right under the Act to retain the \$630.00 amount withheld from the tenant's security deposit.

As the tenant has met the burden of proof, I grant the tenant **\$100.00** for the recovery of the cost of the filing fee pursuant to section 72 of the Act.

Monetary Order – I find that the tenant has established a total monetary claim in the amount of **\$2,430.00**, comprised of \$2,330.00 as described above, plus the \$100.00 filing fee. I grant the tenant a monetary order pursuant to section 67 of the Act in the amount of **\$2,430.00**.

The landlord is cautioned to comply with section 38 of the Act in the future.

Conclusion

The tenant's application is fully successful.

The tenant has established a total monetary claim of \$2,430.00 as indicated above.

I caution the landlord to comply with section 38 of the Act in the future.

This decision will be emailed to both parties. The monetary order will be emailed to the tenant only for service on the landlord. This order must be served on the landlord and

may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 10, 2019

Residential Tenancy Branch