



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Rema Development Ltd.
and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the Act) for:

- an order for the landlord to return the security deposit, pursuant to section 38 of the Act;
- an order requiring the landlord to reimburse the filing fee, pursuant to section 72 of the Act.

The tenant was assisted by lawyer KM and support person HM. The landlord was represented by manager MB.

As both parties were in attendance, I confirmed that there were no issues with service of the tenant's application for dispute resolution and evidence package. The landlord confirmed receipt of the tenant's application package. The tenant confirmed receipt of the landlord's evidence package. In accordance with sections 88 and 89 of the Act, I find that the landlord was duly served with the tenant's application and evidence package and that the tenant was duly served with the landlord evidence package.

All parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary issue – adjournment of the hearing

At the outset of the hearing the tenant's lawyer asked for an adjournment because the lawyer who was expected to assist the tenant could not attend today's hearing.

I considered Rule 7.9 of the Residential Tenancy Branch Rules of Procedure, which reads as follows:

7.9 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

As explained during the hearing, this hearing has been scheduled for more than two months and adjourning the hearing would cause prejudice to the respondent, who would have to attend another future hearing. The request for an adjournment was denied.

Issues to be Decided

- Is the tenant entitled to an order for the landlord to return double the security deposit, pursuant to section 38 of the Act?
- Is the tenant entitled to an order requiring the landlord to reimburse the filing fee, pursuant to section 72 of the Act?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The parties agreed that the tenancy started on August 15, 2017 and ended on July 31, 2019. Rent was \$1,950.00. On August 30, 2017 a security deposit of \$975.00 was collected. There was no pet damage deposit.

The tenant's lawyer submitted:

- The tenant did not authorize the landlord to keep the security deposit;

- The forwarding address of the tenant was provided on the move-out condition inspection report dated July 27, 2019;
- The tenant received a portion of her security deposit in the form of a cheque for \$314.28 on August 07, 2019;
- The damages the landlord is claiming the tenant caused are regular wear and tear.

At a later point in the hearing, the tenant authorized the landlord to keep the amount of \$60.00 for drape cleaning.

The tenant provided the move-out condition inspection report, containing her forwarding address, as well as the monetary order worksheet (RTB form 37).

The landlord's representative testified:

- The landlord received the tenant's forwarding address on the move-out condition inspection report dated July 27, 2019;
- The tenant refused to sign the move-out condition inspection report and did not agree to have any funds deducted from the security deposit;
- The landlord did not apply for dispute resolution to keep the security deposit;
- The landlord deducted \$660.72 for the cost of damages from the security deposit;
- The amount of \$314.28 was returned to the tenant by cheque mailed on August 07, 2019;
- The move-out condition inspection report, and the pictures presented as evidence, show damages caused by the tenant in the fridge crisper drawer and burn marks on the counter top and that the form also states the tenant did not clean the drapes;
- The damage caused by the tenant is not wear and tear and it is the tenant's obligation to pay for the damage.

Furthermore, the landlord provided photos of the damage caused by the tenant, the move-out condition inspection report, containing the tenant's forwarding address, an estimate of repairs of the countertop, the correspondence mentioning the return of \$314.28 and a receipt for the crisper drawer.

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, pursuant to section 38(4)(a) of the *Act*:

38 Return of security deposit and pet damage deposit

(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.

[...]

(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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].

(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.

Policy Guideline 17 of the Residential Tenancy Branch also applies to this case:

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 C: A tenant paid \$400 as a security deposit. The tenant agreed in writing to allow the landlord to retain \$100. The landlord returned \$250 within 15 days of receiving the tenant's forwarding address in writing. The landlord retained \$50 without written authorization.

The arbitrator doubles the amount that remained after the reduction authorized by the tenant, less the amount actually returned to the tenant. In this example, the amount of the monetary order is \$350 ($\$400 - \$100 = \$300 \times 2 = \600 less amount actually returned \$250).

I find the landlord has not brought an application for dispute resolution claiming against the security deposit for any damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I accept the tenant's evidence that the tenant gave the landlord written notice of her forwarding address on July 27, 2019 on the move-out condition inspection report and that the landlord only returned \$314.28 of the security deposit.

Under these circumstances and in accordance with sections 38 (6) and 72 of the *Act*, and Policy Guideline 17, I find that the tenant is entitled to a monetary award of \$1,615.72. Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit.

As the tenant's application is successful, I award the tenant the return of the filing fee.

| ITEM | AMOUNT |
|---|-------------------|
| Security deposit | \$975.00 |
| Amount the landlord was authorized to keep | \$60.00 |
| Security deposit minus the amount the landlord was authorized to keep | \$915.00 |
| Section 38(6) - doubling of security deposit | \$1,830.00 |
| Amount returned by the landlord | \$314.28 |
| Value of security deposit to be returned to tenant | \$1,515.72 |
| Section 38(6) - Reimbursement of filing fee | \$100.00 |
| TOTAL | \$1,615.72 |

Conclusion

I grant the tenant a monetary order pursuant to sections 38 and 72 of the Act , in the amount of \$1,615.72.

This order must be served on the landlord by the tenant. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) to be 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: December 10, 2019

Residential Tenancy Branch