



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The tenant's testimony is as follows. The tenancy began on November 1, 2018 and ended on July 30, 2019. The tenants were obligated to pay \$2000.00 per month in rent plus utilities, in advance and at the outset of the tenancy the tenants paid a \$1000.00 security deposit and a \$500.00 pet deposit. The tenant testified that a written condition

inspection report was not conducted at move in nor was he given any opportunity to do so. The tenant testified that he provided his forwarding address by registered mail on August 1, 2019 but was returned unclaimed. The tenant is seeking the return of double the deposits \$1000.00 + \$500.00 x 2 + \$3000.00. The tenant is also seeking the recovery of the \$100.00 filing fee for a total claim of \$3100.00.

The landlords gave the following testimony. JK testified that the house was new and undamaged. JK testified that the reason they kept the deposits was because they had left so much damage. JK testified that he sent them an email to explain but did not hear back and he assumed that they had moved on. JD testified that she was not aware that they had to conduct written condition inspection reports. The landlords testified that the deposit far exceeds the damage caused in the unit by the tenants. The landlords testified that they had not filed an application to retain the deposit after receiving the tenants forwarding address nor did they obtain written authorization from the tenant to keep all or a portion of it.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant said he is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that 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.

And Section 38 (6) says 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 landlords confirmed that they had not filed an application within fifteen days of receiving the tenants forwarding address to retain the deposit nor did they obtain written authorization from the tenant to keep all or a portion of it. Based on the above, I find that the tenants are entitled to the doubling provision under section 38 of the Act and therefore are entitled to the return of double their deposits in the amount of \$3000.00.

The tenant is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The tenants have established a claim for \$3100.00. I grant the tenant an order under section 67 for the balance due of \$3100.00. This order may be filed in the Small Claims 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: January 28, 2020

Residential Tenancy Branch