



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNSD**

Introduction

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

Authorization to recover the filing fees from the landlord pursuant to section 72; and
An order for the return of a security deposit or pet damage deposit pursuant to section 38.

The tenant attended the hearing and the landlord attended the hearing assisted by her son, EL who also provided translation services ("landlord"). The landlord acknowledged service of the tenant's Application for Dispute Resolution Proceedings Package and stated no concerns with timely service of documents. The tenant did not acknowledge receiving the landlord's evidence. The landlord testified that he served the tenant with his evidence by registered mail on January 4, 2020. The tracking number for the mailing is recorded on the cover page of this decision. I deem the landlord's evidence served upon the tenant on January 9, 2020, five days after mailing in accordance with sections 88 and 90 of the *Act*.

Preliminary Issue

The majority of the landlord's evidence pertained to alleged damage done to the rental unit and compensation they believe the tenant should pay him. I advised the parties that this hearing was strictly limited to the tenant's application for a return of the security deposit (doubled) if the landlord did not comply with sections 35 and 38 of the *Act* and that the landlord is at liberty to file an application against the tenant for compensation pursuant to section 67 of the *Act* at a later date.

Issue(s) to be Decided

Is the tenant entitled to:

- Authorization to recover the filing fees from the landlord pursuant to section 72; and
- An order for the return of a security deposit or pet damage deposit pursuant to section 38?

Background and Evidence

The tenant provided the following testimony. The one-year fixed term tenancy began on September 1, 2018. Rent was set at \$2,500.00 per month payable on the first day of the month. A security deposit of \$1,250.00 and a pet damage deposit of \$350.00 was collected by the landlord, which the landlord continues to hold. The landlord did not provide the tenant with any opportunity to do a condition inspection report with the landlord at the commencement of the tenancy.

The tenancy ended pursuant to the fixed term agreement on September 1, 2019. The tenant was cleaning the rental unit on that date when the landlord arrived without notice to him to do a condition inspection report. The tenant testified he was not given any opportunity to coordinate a time and date for the inspection. The tenant could not stay for the duration of the condition inspection when the landlord came to do it and left to go to work. The tenant testified the landlord told him that it takes time to process the report and that they would notify him of any issues regarding the tenancy later, however they never did.

The tenant notified the landlord of his forwarding address by email on September 2, 2019. A copy of the email and the landlord's response to the email was provided as evidence. The tenant testified he also gave the landlord another handwritten notice of his forwarding address by registered mail on September 1st, however he did not retain a copy of this letter or provide the tracking number for the mailing.

The landlord testified that she doesn't remember whether they did a condition inspection report with the tenant at the commencement of the tenancy. The landlord acknowledges receiving the tenant's forwarding address by email on September 2nd.

The landlord testified he verbally arranged a time for the condition inspection report to be done with the tenant. The date and time was not put into writing, but the landlord says it was planned for September 1st. The landlord acknowledges they did not properly make arrangements for condition inspection report at the beginning and end of the tenancy since it's their first time being a landlord and they were unaware of their responsibilities.

Analysis

At the commencement of the tenancy, the landlord did not pursue a condition inspection of the suite with the tenant, as required by section 23 of the *Act*. (reproduced below)

23 Condition inspection: start of tenancy or new pet

- 1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
- 2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

- a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
- b) a previous inspection was not completed under subsection (1).
- 3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- 4) The landlord must complete a condition inspection report in accordance with the regulations.
- 5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- 6) The landlord must make the inspection and complete and sign the report without the tenant if
 - a) the landlord has complied with subsection (3), and
 - b) the tenant does not participate on either occasion.

Pursuant to section 24, the landlord's right to claim against the security deposit **is extinguished** if the landlord does not offer the tenant at least two opportunities for inspection.

Section 38 of the *Act* addresses the return of security deposits.

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.

Section 38(5) and (6) is further clarified in Residential Tenancy Branch Policy Guideline PG-17 which says, in part C-3:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

I find the landlord did not provide 2 opportunities to inspect the suite with the tenant at the commencement of the tenancy and the landlord's right to claim against it was extinguished pursuant to sections 23 and 24. Further, the landlord did not return the tenant's security deposit within 15 days of being served with the tenant's forwarding address at the end of the tenancy, contrary to section 38 of the *Act*.

The wording of section 38(6) is clear and unequivocal. The tenant has not waived the doubling of the deposits and is entitled to **\$3,200.00** in compensation. Pursuant to section 67 of the *Act*, I award the tenant a monetary order for this amount.

As the tenant's application was successful, the tenant is also entitled to recovery of the **\$100.00** filing fee for the cost of this application.

Conclusion

I issue a monetary order in the tenant's favour in the amount of **\$3,300.00**. 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: January 28, 2020

Residential Tenancy Branch