Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with an application by the tenants 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 filling fee, pursuant to section 72 of the Act.

Tenants LM and GG and witness ME were present. Landlord AG was also present.

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

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

Issues to be Decided

1. Are the tenants entitled to an order for the landlord to return double the security deposit, pursuant to section 38 of the Act?
2. Are the tenants 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 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 tenants' claims and my findings are set out below.

The parties agreed the tenancy started on September 01, 2018 and ended on September 01, 2019. Monthly rent was $1,600.00 due on the first day of the month. At the outset of the tenancy a security deposit of $765.00 was collected. The tenancy agreement was submitted as evidence.

The landlord received a letter including the forwarding address of the tenants on September 17, 2019. A copy of this letter has also been submitted as evidence. The tenants received a portion of their security damage deposit via e-transfer for $485.00 on October 01, 2019.

The parties also agreed there was no authorization by the tenants for the landlord to keep any portion of the security damage deposit.

A monetary order worksheet (RTB-37) was also provided by the tenants.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenants' 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 tenants' forwarding address in writing.

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

I accept the tenants' undisputed testimony that the tenants gave the landlord written notice of their forwarding address on September 17, 2019 and that the landlord only returned $485.00 of the security deposit.

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. This provision does not apply if the landlord has obtained the tenants' 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.

The value of the monetary award to the tenant is address in Policy Guideline 17 of the Residential Tenancy Branch:

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 x 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)

Under these circumstances and in accordance with sections 38 (6) and 72 of the Act and Policy Guideline 17, I find that the tenants are entitled to a monetary award of $1,045.00. Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit.

As the tenants' application is successful, I award the tenants the return of the filling fee.

In summary:

ITEM	**AMOUNT $**
Security damage deposit	765.00
Section 38(6) - doubling of security and pet damage deposits	1,530.00
Amount returned by the landlord	485.00
Amount of security deposit to be returned to tenants	1,045.00
Section 72 - Reimbursement of filing fee	100.00
TOTAL	**1,145.00**

Conclusion

I grant the tenants a monetary order pursuant to sections 38 and 72 of the Act, in the amount of $1,145.00.

This order must be served on the landlord by the tenants. If the landlord fails to comply with this order the tenants 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: February 04, 2020

Residential Tenancy Branch