



Dispute Resolution Services

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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* (the "Act") for:

- authorization to obtain a return of all or a portion of the security and pet damage deposit pursuant to section 38; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by their agent (the "landlord"). The tenant HLP (the "tenant") primarily spoke for both co-tenants.

As both parties were present service of documents was confirmed. The landlord confirmed receipt of the tenant's application and evidence and testified that they had not provided any evidence of their own. Based on the testimonies I find that the landlord was served with the tenant's materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a return of the deposit for this tenancy?
Are the tenants entitled to recover the filing fee from the landlord?

Background and Evidence

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

This periodic tenancy began in December 2016. Monthly rent was \$1,650.00 payable on the first of each month. The landlord assumed the tenancy when they purchased the rental property in April 2019.

The parties agree that a security deposit of \$825.00 was paid at the start of the tenancy and is still held by the landlord. The tenant submits that they paid a pet damage deposit of \$200.00 in June, 2018 when they acquired a cat. The tenant provided a copy of the cashed cheque showing that amount was paid to the previous landlord. The landlord testified that they were given no information on a pet damage deposit being collected when they assumed the tenancy.

The tenant provided notice to end the tenancy by correspondence dated August 15, 2019 and vacated the rental unit by September 15, 2019. The parties agree that the tenants paid \$825.00 towards rent for the month of September 2019. The parties agree that no condition inspection report was prepared at any time for this tenancy. The tenants provided their forwarding address in writing by a letter dated September 17, 2019. The tenants say they gave no authorization that the landlord may retain any portion of the deposits for this tenancy.

The landlord submits that as the tenants provided notice to end the tenancy on August 15, 2019, and rent is payable on the first of each month, the effective date of the notice was September 30, 2019. The landlord submits that there was an arrear of \$825.00 as the tenants failed to pay full rent for the month of September 2019. The landlord also submits that the rental unit was in a state of disarray and they incurred costs to clean and repair the suite.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

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 as per section 38(4)(a).

In the present case I accept the tenant's evidence that a pet damage deposit of \$200.00 was paid in addition to the security deposit of \$825.00. I find the tenant's evidence by way of a cashed cheque for the amount of \$200.00 with a note indicating that it was paid for "pet deposit" to be sufficient to establish that a pet damage deposit was paid. While the landlord testified that they were given no information about a pet damage deposit having been collected when they assumed the tenancy from the previous landlord, I find the tenant's evidence to be sufficient to establish on a balance that the tenants paid a \$200.00 pet damage deposit for this tenancy.

I accept the evidence of the parties that the tenants vacated the rental unit by September 15, 2019 and provided a forwarding address on September 17, 2019. The landlord did not return the deposits for this tenancy to the tenants nor did they file an application for dispute resolution for authorization to retain the deposit, either within the 15 days provided under the *Act* or at all.

While the landlord testified that there was an arrear for this tenancy and that they incurred some costs to clean the suite, I find this to be irrelevant to the matter at hand. The landlord has not filed an application for authorization to recover any amount for unpaid rent or repairs from the deposits for this tenancy. The undisputed evidence of the parties is that the tenants have not given authorization that the landlord may retain any portion of the deposits for this tenancy.

If the landlord had concerns about unpaid rent or the condition of the rental suite they ought to have filed an application for dispute resolution in accordance with the *Act*. A landlord cannot simply withhold the deposits for a tenancy without following the appropriate legislative steps. I find that the landlord has failed to return the security and pet damage deposit for this tenancy to the tenants without the tenants' authorization or filing an application to claim against the deposits.

Furthermore, the parties gave evidence that no condition inspection report was prepared at any time during the tenancy. Section 36 of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if they do not comply with the requirements of section 35 in offering the tenant 2 opportunities for an inspection

and completing a condition inspection report. While the parties appear to have inspected the rental unit the landlord failed to prepare a proper inspection report as required under the Act and has therefore extinguished their right to claim against the deposits.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. I accept the tenants' evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to an \$2,050.00 Monetary Order, double the value of the security and pet damage deposits paid for this tenancy. No interest is payable over this period.

As the tenants were successful in their application they are entitled to recover the filing fee from the landlord.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$2,150.00 against the landlord, allowing them to recover double the security and pet damage deposits for this tenancy and recover their filing fee.

The tenants are provided with a Monetary Order in the above terms and 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: March 5, 2020

Residential Tenancy Branch