



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:

- A return of the security deposit for this tenancy 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.

As both parties were present service was confirmed. The landlord testified that they had been served with the tenants' materials and that they had not served any evidence on the tenants. Based on the testimonies I find that the landlord was served with the tenants' materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a return of all or part of their security deposit?

Are the tenants entitled to recover their filing fee from the landlord?

Background and Evidence

The parties agree on the following facts. This tenancy began in September 2018 and ended on September 30, 2019. Monthly rent was \$1,600.00. The tenants paid a security deposit of \$800.00 and an additional deposit of \$500.00 for furnishings. The parties conducted and completed a move-in inspection at the start of the tenancy. While the tenants and landlord met at the end of the tenancy for a move-out inspection the landlord had already performed an inspection in the tenant's absence and no written

condition inspection report was prepared. The tenants did not agree to any deductions from the deposit.

The landlord deducted amounts for missing furnishings, unpaid utilities and cleaning and issued the tenants a return of \$518.00 on October 15, 2019. The tenants did not agree with the deductions and did not cash the cheque issued by the landlord.

The tenants subsequently provided the landlord with a forwarding address in writing by a letter dated October 16, 2019. The landlord confirmed receipt of the forwarding address but disputes its validity as the mailing address provided is a business address.

The tenants testified at the hearing that they agree to a deduction of \$73.92 for unpaid utilities but disagree with any other deductions. The landlord submits that they are authorized to make the deductions from the deposit as these are costs incurred from the tenancy.

Analysis

Section 19 of the *Act*, requires that a security deposit must not exceed one-half of one month's rent. In the case at hand, the monthly rent was \$1,600.00 and the security deposit \$800.00.

The tenants were made to pay an additional \$500.00, ostensibly as a deposit for the furnishings in the rental unit. I find that this is an attempt by the landlord to circumvent the monetary limit for a security deposit. The requirement to pay this additional deposit is included in the written tenancy agreement and the landlord characterizes it as a deposit to protect the furnishings in the rental unit. The parties treated this additional deposit as being part of the security deposit for this tenancy and referred to the amounts collectively. It is apparent that this deposit is intended to comprise part of the security deposit for this tenancy rather than being a distinct deposit for rental of furnishings.

Therefore, I find that there was a deposit of \$1,300.00 for this tenancy comprised of a \$800.00 security deposit and a \$500.00 overpayment collected in contravention of the *Act*. I find that the tenants are entitled to a return of the overpayment of \$500.00 and issue a monetary order accordingly.

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.

In the present case the landlord attempted to return the amount of \$518.00 to the tenants on October 15, 2019. The tenants did not accept the deductions the landlord made from the deposits and chose not to cash the cheque issued.

The parties agree that the tenants provided a forwarding address by a letter dated October 16, 2019. The landlord disputes that the address provided by the tenants can be considered a forwarding address as it is a business address and not an address at which the tenants reside.

I find that the landlord's argument has no merit. It is not open for a landlord to dispute the validity of an address provided by the tenants. A forwarding address is simply the address provided by the tenants as the address for service after the end of the tenancy. I find that the landlord had no right to pick and choose what address they would consider a forwarding address when one was provided by the tenants and expressly identified as their forwarding address for service and return of their deposit.

Based on the foregoing, I find that the landlord was provided with a forwarding address on October 16, 2019 and failed to either return the full amount of the security deposit for this tenancy or file an application for dispute resolution for authorization to retain the deposit.

While the landlord testified that they incurred losses due to the tenants, if there were unpaid utilities or issues with the condition of the suite the landlord ought to have filed an application for dispute resolution as required under the Act. The landlord chose to unilaterally make deductions from the deposit without authorization or going through the legislative steps. The landlord claimed that they have many years of experience with residential tenancies. If this is the case, the landlord is expected to abide by the provisions of the Act instead of simply making deductions without adhering to the legislative processes.

Furthermore, the parties testified that the landlord did not prepare a written condition inspection report at the end of the tenancy. Section 35 of the Act sets out the requirement for a landlord to provide a tenant with at least 2 opportunities to participate in a move out inspection and complete a report in accordance with the regulations. The landlord failed to prepare a written inspection report and none was submitted into evidence.

Based on the undisputed evidence before me, I find that the landlord has failed to return the tenants' security deposit in full, but attempted to return \$518.00 on October 15, 2019. While I understand that the tenants did not accept the payment at that time, I find that the landlord made an attempt to return in a timely manner.

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*. I accept the testimony of the tenants that they authorized the landlord to make a deduction of \$73.92 from the security deposit for unpaid utilities.

Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a monetary award for double the amount of the security deposit which the landlord retained without authorization, \$416.16 (\$800.00-\$73.92-\$518.00=\$208.08 x 2).

The tenants are also entitled to a return of the \$518.00 portion of the security deposit which the landlord had attempted to previously pay.

As the tenants' application was successful I allow the tenants to recover their filing fee from the landlord.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1,534.16 on the following terms:

Item	Amount
Return of Overpaid Deposit	\$500.00
Double Amount of Security Deposit not returned by Landlord	\$416.16
Return of Security Deposit Balance	\$518.00
Filing Fee	\$100.00
TOTAL	\$1,534.16

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 24, 2020

Residential Tenancy Branch