



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* ("Act") for:

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for her application, pursuant to section 72.

The landlord, the landlord's agent and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that her agent had permission to speak on her behalf. This hearing lasted approximately 30 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord and her agent confirmed that they did not submit documentary evidence on behalf of the landlord for this hearing.

Both parties confirmed that they had no objections and they were ready to proceed with this hearing.

Issues to be Decided

Is the tenant entitled to recover double the amount of her security deposit?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the tenant's documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 1, 2017 and ended on February 27, 2018. Both parties signed a written tenancy agreement and a copy was provided for this hearing. Monthly rent of \$2,100.00 was payable on the first day of each month. A security deposit of \$1,050.00 was paid by the tenant and the landlord continues to retain this deposit. The landlord attempted to return \$667.25 to the tenant by way of e-transfer on March 2, 2020 but the landlord cancelled it on March 5, 2020, without the tenant accepting the e-transfer. A move-in condition inspection report was completed with the tenant's former roommate. A move-out condition inspection report was completed by the landlord, without the tenant present. The landlord did not use an approved RTB form referred to as RTB-22 entitled "Notice of Final Opportunity to Schedule a Condition Inspection" to provide the tenant with an opportunity to schedule the move-out condition inspection. The tenant provided a written forwarding address by way of email on March 3, 2018, which was received and responded to by the landlord's agent on the same date. The landlord did not have any written permission to keep any part of the tenant's security deposit. The landlord did not file an application to retain any amount from the tenant's security deposit.

Both parties agreed that two move-out condition inspections were scheduled, where both parties showed up, but no inspections occurred, due to rescheduling. The landlord's agent said that a third move-out condition inspection was scheduled but only the landlord, not the tenant, showed up. The tenant said that she did not go to the rental unit after moving out on the day that the new tenants were moving in, because she was not supposed to be there. The tenant said that she did not get a copy of the move-in condition inspection report from the landlord. The tenant claimed that she mailed a copy of her written forwarding address to the landlord around March 8, 2020, which the landlord and her agent denied receiving.

Analysis

I find that the tenant's claim was made within the two-year limitation period. It was filed on January 22, 2020, which is within two years of the tenancy ending on February 27,

2018. Therefore, I have jurisdiction to hear this application under section 60(1) of the *Act*.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the security, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposits. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I find that the landlord did not offer the tenant two opportunities to complete a move-out condition inspection in accordance with section 35(2) of the *Act*. While both parties agreed to meet two times, both meetings were rescheduled by the parties. During the third meeting date, both parties dispute what occurred. Since the tenant was not present at the third meeting, claiming that new tenants were moving in, I find that the landlord was obligated to offer the tenant a second opportunity to conduct a move-out condition inspection.

I find that the landlord did not provide the tenant with a second opportunity to perform a move-out condition inspection. *Regulation* 17(2)(b) requires that the landlord provide a second opportunity for a move-out condition inspection by providing the tenant with a notice in the approved RTB form. The landlord and her agent confirmed that they did not provide the tenant with the appropriate RTB-22 form "Notice of Final Opportunity to Schedule a Condition Inspection."

Accordingly, I find that the landlord completed the move-out condition inspection report improperly without providing the tenant with a second opportunity to attend the inspection. For the reasons indicated above, I find that the landlord's right to claim against the deposit is extinguished by section 36(a) of the *Act*. This section states that the landlord cannot claim against the deposit for damage to the rental unit if she has not provided two opportunities to the tenant to complete a move-out condition inspection.

This tenancy ended on February 27, 2018. The tenant provided her written forwarding address to the landlord by email, which was acknowledged by the landlord's agent, on March 3, 2018. The tenant provided a copy of both emails. Although email is not a

valid written service method under section 88 of the *Act*, I find that the landlord received and acknowledged receipt of the email, by way of her agent. Therefore, I find that the landlord was sufficiently served, as per section 71(2)(c) of the *Act*, with the tenant's forwarding address by email.

The tenant did not give the landlord written permission to retain any amount from her deposit. The landlord did not return the full deposit to the tenant. The landlord only attempted to return a portion of it and then cancelled the return by e-transfer.

Over the period of this tenancy, no interest is payable on the landlord's retention of the tenant's security deposit. In accordance with section 38(6)(b) of the *Act*, I find that the tenant is entitled to double the value of her deposit of \$1,050.00, totaling \$2,100.00.

As the tenant was successful in this application, I find that she is entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$2,200.00 against the landlord. 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: May 28, 2020

Residential Tenancy Branch