



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 all or a portion of their security 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 assisted by an interpreter.

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

Issue(s) to be Decided

Is the tenant entitled to a return of all or a portion of the security deposit?

Background and Evidence

This tenancy began in August 2019. A security deposit of \$450.00 was paid and is still held by the landlord. The tenant vacated the rental unit within a week of the tenancy starting and provided a forwarding address to the landlord on September 3, 2019. No condition inspection report was prepared at any time for this tenancy.

The landlord offered to return \$700.00 comprised of a portion of the rent and security deposit for this tenancy and initiated an electronic transfer on or about September 19, 2019. The tenant refused the payment as they wanted a full refund of the \$900.00 rent and \$450.00 security deposit paid.

There was a previous hearing regarding this tenancy under the file number on the first page of this decision. The tenant withdrew the portion of their application seeking a return of the security deposit at the earlier hearing and reapplied under the present application.

Analysis

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).

I accept the evidence of the parties that the tenant provided a forwarding address on September 3, 2019. I accept the evidence that the landlord attempted to make a payment by electronic fund transfer on or about September 19, 2019 but the transfer was not accepted by the tenant. I further accept that the tenant has not provided authorization that the landlord may retain any portion of the deposit for this tenancy.

Furthermore, I accept the 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 landlord made some complaints that they had suffered some monetary losses I find that this is irrelevant to the matter at hand. A landlord may not unilaterally retain a security deposit without following the legislative steps or obtaining the written authorization of the tenant. It is evident that the landlord was aware of their duty to return the deposit as they attempted to return the full amount with a partial refund of rent. I find that the landlord attempted to return the full deposit within 15 days of

receiving the tenant's forwarding address and fulfilled their obligation pursuant to section 38(1) of the Act.

I find that the entirety of this dispute could have been avoided by the tenant simply accepting the return of the security deposit offered by the landlord in September 2019. If the tenant was also seeking a monetary award for losses, they could simply have pursued a claim for the disputed amount. Instead the tenant has filed two separate applications and has used two hearing slots of the Branch to pursue their monetary claim. I find the tenant's conduct to be a misuse of the limited resources of the branch for an issue that was eminently avoidable had common sense prevailed.

Nevertheless, I do find that the landlord has not applied for dispute resolution for authorization to retain the security deposit and find that the tenant is entitled to a return of the security deposit in the amount of \$450.00.

As I find that this application was necessitated by the tenant's failure to act reasonably in accepting the return of the security deposit initially, I decline to allow the tenant to recover their filing fee.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$450.00 against the landlord. The tenant is 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: May 28, 2020

Residential Tenancy Branch