



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OTBEC Property Management and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A participatory hearing was held, via teleconference, on May 28, 2020. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- An order that the Landlord return all or part of the security deposit or pet damage deposit

The Tenant and the Landlord attended the hearing. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's evidence and did not take issue with the service of these documents. I find both parties sufficiently served each other with their documentation.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

Background and Evidence

The parties confirmed that the Tenant paid a security deposit of \$372.50 and a pet deposit of \$372.50 and that the Landlord still holds this amount. The parties also confirmed that the Tenant moved out of the rental on January 11, 2020. However, she did not return the keys until January 26, 2020, the date the move-out inspection occurred.

The Landlord feels the Tenant is responsible for some costs (cleaning, damage, re-renting costs), and does not feel she should have to return the deposit, in full. Both parties confirmed that they never reached a written agreement with respect to what the Landlord was entitled to retain from the deposits.

The Tenant stated that she did not explicitly authorize the Landlord to retain any of the deposits. The Landlord confirmed that she did not file an application against the Tenant and the deposits held, as she believed she had until the date the fixed term would have normally ended to deal with them. The parties confirmed that the Tenant was in a fixed term tenancy agreement until the end of June 2020. The Tenant gave written notice that she would be ending the tenancy on December 16, 2019. The Tenant indicated she was moving out by the end of January 2020, and she provided her forwarding address at that time. The Landlord confirmed receipt of the Tenant's written notice and forwarding address on December 16, 2019.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, both parties confirmed that the Tenant moved out of the rental unit on January 11, 2020. However, the Tenant did not return her keys until January 26, 2020, the date the move-out inspection was done. I find the latter of these dates is the date the tenancy ended, as this is when the Tenant relinquished access. There is no evidence she returned to the unit after January 26, 2020.

The Landlord confirmed she received the Tenant's forwarding address in writing on December 16, 2020. I find the Landlord received the Tenant's forwarding address on that same day.

I note the Tenant did not authorize any deductions from the security deposit. I also note that, as per the documentary evidence, there was a move-in and move-out inspection. The evidence before me indicates that neither party extinguished their right to the security deposit.

Pursuant to section 38(1) of the Act, the Landlord had 15 days from receipt of the forwarding address in writing or the end of the tenancy, whichever is later. In this case, the latter of those dates is January 26, 2020, the date the keys were returned, and the Tenant relinquished access. I find the Landlord had until February 10, 2020, to either repay the security deposit (in full) to the Tenant or make a claim against it by filing an application for dispute resolution. The Landlord did neither and I find the Landlord breached section 38(1) of the Act. The Landlord is not entitled to keep the deposit, as she believed she could, until the end date the fixed term tenancy was initially set to expire.

Accordingly, as per section 38(6)(b) of the Act, I find the Tenant is entitled to recover double the amount of the security and pet deposit (\$745.00 x 2). Further, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenant paid to make the application for dispute resolution.

In summary, I issued the Tenant a monetary order for \$1,590.00 based on the Landlord's failure to deal with the security deposit in accordance with section 38 of the Act.

Conclusion

I grant the Tenant a monetary order in the amount of **\$1,590.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may

file the order in the Provincial Court (Small Claims) and 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: May 28, 2020

Residential Tenancy Branch