



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding QUADREAL PROPERTY GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDB-DR, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on May 07, 2020 (the "Application"). The Tenant applied for return of the security and pet damage deposits as well as reimbursement for the filing fee. This matter went through the direct request process but was adjourned to a participatory hearing.

The Tenant appeared at the hearing. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenant who did not have questions when asked. The Tenant provided affirmed testimony.

The Tenant submitted evidence prior to the hearing. The Landlord did not. I addressed service of the hearing package and Tenant's evidence.

The Tenant testified that the hearing package and evidence were served by email. The Tenant testified that the hearing package was sent May 11, 2020 to E.G. for the Landlord. The Tenant testified that E.G. replied to the email. The Tenant had not submitted a copy of these emails. I allowed the Tenant to submit a copy of these emails by the end of the day following the hearing and the Tenant did so.

The emails submitted show the Tenant sent E.G. documents May 11, 2020 and E.G. replied to the email. The emails show the Tenant emailed the evidence to E.G. May 07, 2020 for the direct request proceeding.

The Tenant also submitted emails with E.G. from during the tenancy.

Based on the undisputed testimony of the Tenant and emails submitted, I am satisfied the Tenant emailed E.G. the hearing package on May 11, 2020 and the evidence on

May 07, 2020. I acknowledge that the evidence was sent for the direct request process and prior to the matter being adjourned to a participatory hearing. I am satisfied this is sufficient as the evidence for the direct request process was the same as the evidence before me.

The Director's Order issued March 30, 2020 permits email service and states:

Pursuant to sections 71(2)(b) and (c) of the Residential Tenancy Act...I order that, until the declaration of the state of emergency made under the Emergency Program Act on March 18, 2020 is cancelled or expires without being extended:

- a document of the type described in section 88 or 89 of the Residential Tenancy Act...has been sufficiently given or served for the purposes of the applicable Act if the document is given or served on the person in one of the following ways:
 - the document is emailed to the email address of the person to whom the document is to be given or served, and that person confirms receipt of the document by way of return email in which case the document is deemed to have been received on the date the person confirms receipt;
 - the document is emailed to the email address of the person to whom the document is to be given or served, and that person responds to the email without identifying an issue with the transmission or viewing of the document, or with their understanding of the document, in which case the document is deemed to have been received on the date the person responds; or
 - the document is emailed to the email address that the person to whom the document is to be given or served has routinely used to correspond about tenancy matters from an email address that the person giving or serving the document has routinely used for such correspondence, in which case the document is deemed to have been received three days after it was emailed

I am satisfied based on the emails submitted that E.G. received the hearing package May 11, 2020 as E.G. replied to the Tenant's email May 11, 2020. I am satisfied E.G. received the evidence May 10, 2020 as it was sent to the same email address E.G.

replied to the Tenant from May 11, 2020. I am satisfied E.G. was served in accordance with the Director's Order. I am satisfied E.G. could be served on behalf of the Landlord given the Tenant communicated with E.G. during the tenancy about the tenancy and given E.G. did not raise this as an issue in the reply email. I am satisfied the Landlord was served with the hearing package and evidence a month prior to the hearing, in sufficient time to prepare for, and appear at, the hearing.

I proceeded with the hearing in the absence of the Landlord. The Tenant was given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and all oral testimony of the Tenant. I have only referred to the evidence I find relevant in this decision.

The Application originally named a second tenant. The Tenant testified that the second tenant was actually an occupant of the rental unit. Therefore, I have removed the second tenant from the Application and style of cause.

During the hearing, the Tenant advised that he is not waiving his right to return of double the security and pet damage deposits and is seeking return of double the deposits.

Issues to be Decided

1. Is the Tenant entitled to return of double the security and pet damage deposits?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant submitted an Application to Lease and confirmed the following information about the tenancy agreement in this matter. The tenancy started February 15, 2018 and was for a fixed term of one year. There was a second one year term agreed to then the tenancy became a month-to-month tenancy. Rent was \$2,500.00 per month due on the first day of each month. The Tenant paid a \$1,250.00 security deposit and \$1,250.00 pet damage deposit.

The Tenant testified that the tenancy ended March 26, 2020.

The Tenant testified that his forwarding address was provided to the Landlord by email March 26, 2020. This email was in evidence.

The Tenant submitted a copy of the Condition Inspection Report ("CIR"). The Tenant's forwarding address is noted on the CIR.

The Tenant testified as follows. The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security or pet damage deposits. The Landlord did not apply to the RTB to keep the security or pet damage deposits.

The Tenant testified that the Landlord did return the original amount of the security and pet damage deposits by cheque. The Tenant testified that the cheque is dated May 01, 2020 and was received May 10, 2020. The Tenant testified that the cheque has been cashed. The Tenant confirmed he is not waiving his right to return of double the security and pet damage deposits.

The Tenant testified that he participated in a move-in inspection at the start of the tenancy.

The Tenant testified that he did not do a move-out inspection with the Landlord and that an agent for the Landlord did it alone. The Tenant testified that the Landlord did not provide him with a final opportunity to do the move-out inspection on the RTB form.

Analysis

Section 38 of the *Residential Tenancy Act* (the "*Act*") sets out the obligations of a landlord in relation to security and pet damage deposits held at the end of a tenancy.

Section 38(1) requires a landlord to return the security and pet damage deposits in full or claim against them within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

I am satisfied based on the undisputed testimony of the Tenant that the tenancy ended March 26, 2020. This is supported by the email in evidence.

I am satisfied based on the undisputed testimony of the Tenant and email in evidence that the Tenant provided his forwarding address to E.G. by email March 26, 2020. I am satisfied E.G. received this email because E.G. completed the CIR in evidence and the Tenant's forwarding address is noted on the second page of the CIR. Further, the

evidence shows the forwarding address was provided as part of an email chain with E.G. The CIR in evidence shows E.G. completed the CIR March 27, 2020 and therefore I am satisfied E.G. received the forwarding address by March 27, 2020.

March 27, 2020 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from March 27, 2020 to repay the security and pet damage deposits in full or file a claim against them. Therefore, the Landlord had until April 11, 2020 to deal with the deposits.

I am satisfied based on the undisputed testimony of the Tenant that the Landlord sent the Tenant the security and pet damage deposits by cheque May 01, 2020. This is well past the 15-day deadline for dealing with the deposits. I find the Landlord failed to comply with section 38(1) of the *Act* in relation to the security and pet damage deposits.

Sections 38(2) to 38(4) of the *Act* state:

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant...

I am satisfied based on the undisputed testimony of the Tenant that he participated in a move-in inspection at the start of the tenancy. I am satisfied based on the undisputed testimony of the Tenant that he was not given a final opportunity to do the move-out inspection on the RTB form. Given these points, I am satisfied the Tenant did not

extinguish his rights in relation to the security or pet damage deposits under section 24 or 36 of the *Act*. Section 38(2) of the *Act* does not apply.

I am satisfied based on the undisputed testimony of the Tenant that the Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. Section 38(3) of the *Act* does not apply.

I am satisfied based on the undisputed testimony of the Tenant that the Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security or pet damage deposits. Section 38(4) of the *Act* does not apply.

Given the above, I find the Landlord failed to comply with section 38(1) of the *Act* in relation to the security and pet damage deposits and that none of the exceptions outlined in sections 38(2) to 38(4) of the *Act* apply. Therefore, the Landlord was not permitted to claim against the security or pet damage deposits and was required to return double the deposits to the Tenant pursuant to section 38(6) of the *Act*. The Landlord was required to repay the Tenant \$5,000.00 in deposits.

I am satisfied based on the Tenant's undisputed testimony that the Landlord returned \$2,500.00 for the security and pet damage deposits May 01, 2020. The Landlord must return a further \$2,500.00 pursuant to section 38(6) of the *Act*. There is no interest owed on the security or pet damage deposits as the amount of interest owed has been 0% since 2009.

As the Tenant was successful in the Application, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to \$2,600.00. I issue the Tenant a Monetary Order for this amount.

Conclusion

The Tenant is entitled to \$2,600.00 and I issue the Tenant a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with the Order, the 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 *Act*.

Dated: June 15, 2020

Residential Tenancy Branch