



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPP, MNSD, FFT

Introduction

The tenants filed an Application for Dispute Resolution (the “Application”) on March 28, 2020 seeking an Order granting a refund of the security deposit, a return of personal property, as well as recovery of the filing fee for the hearing process. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on May 22, 2020.

In the conference call hearing I explained the process and provided each party the opportunity to ask questions. The tenants and a representative for the landlords each attended the hearing, and I provided each with the opportunity to present oral testimony.

The tenants stated they served notice of this hearing and their prepared evidence to the landlords via registered mail. The representative for the landlords confirmed receipt of this same material. The landlord hand-delivered their evidence for this hearing to the tenants who confirmed receipt of the same.

Issue(s) to be Decided

- Are the tenants entitled to an Order granting a refund of double the amount of the security deposit and pet damage deposit pursuant to section 38 of the *Act*?
- Are the tenants entitled to an Order stating that the landlords are to return personal property, pursuant to section 65 of the *Act*?
- Are the tenants entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all evidence and written submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

Neither party submitted a copy of the tenancy agreement into evidence. Both parties agreed as to its terms. The tenancy started on September 1, 2018. Rent was \$900.00 per month payable on the first each month. The tenant paid a security deposit of \$375.00. The tenant maintains that they were never late paying rent – it was always “a week early”.

The ‘Two Month Notice to End Tenancy Because for the Landlord’s Use of Property’ was issued by the landlord on January 23, 2020 and served in person on the same day. This named both tenants and gave notice to vacate the rental unit by March 31, 2020.

The tenants stated that they vacated on February 27, then tried to arrange to exchange the keys for some personal items that were left behind after a cleaner they hired missed them in a drawer. They specifically named a screwdriver set worth approximately \$49.99 though specified they would rather have the actual tools. After communication between the parties, the landlord stated they could not find these tools. The tenant dropped the keys back to the landlord on March 8, 2020.

The tenants presented a form entitled ‘Tenant’s Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit’ signed March 10, 2020. They stated: “We gave the request for the return of our deposit along with our forwarding address on March 10th in person. . .” The landlord acknowledged this delivery and stated that this visit created tension between the landlords and the tenants.

In the hearing the landlord spoke to this timeline and reiterated their search for missing items claimed by the tenants was fruitless. They also presented photos and an estimate to repair walls and carpet, amounting to \$1312.50. The landlord stated this is a claim on the security deposit. This was an official estimate after differing amounts were stated to them verbally on the phone.

Analysis

Section 38(1) of the Act provides that a landlord must either: repay a security or pet deposit; or apply for dispute resolution to make a claim against those deposits. This must occur within 15 days after the later of the end of tenancy or the tenant giving a forwarding address.

Section 38(4) provides that a landlord may retain a security deposit or pet deposit if the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. This subsection specifies this written agreement must occur at the end of a tenancy.

Section 38(6) sets out the consequences where the landlord does not comply with the requirements of section 38(1). These are: the landlord may not make a claim against either deposit; and, the landlord must pay double the amount of either deposit, or both.

The landlord presented that they had discussions with the tenants about damage to the walls and carpet. This was a discussion on the need for repair, and the costs thereof, with no agreement on the matter.

The landlord in this hearing presents the costs and photos showing the carpet and walls; however, the landlord did not file for a dispute resolution to make a claim for monetary compensation against the security deposit.

I find the evidence shows the tenants gave their forwarding address to the landlord on March 10, 2020. This is clear in the form presented showing this, and the landlord's confirmation that there was a knock on the door on that date that caused confrontation.

The landlord did not repay the security deposit or make a claim against it within 15 days. As such, the landlord has no right to present a claim in this hearing to ask for compensation. Moreover, the landlord has not complied with the requirements of section 38(1).

For these reasons, the landlord must pay double the amount of the security deposit, as per section 38(6) of the Act.

On the issue of the return of personal items, the tenants in the hearing abandoned their request for replacement of the tools. They stated the costs of these items would be

recovered by a security deposit repayment. For this reason, I dismiss the tenants' claim in relation to the return of these items.

The *Act* section 72 grants me the authority to order the repayment of a fee for the Application. As the tenants were successful in their claim, I find they are entitled to recover the filing fee from the landlord.

Conclusion

I order the landlord to pay the tenants the amount of \$850.00 which includes: \$750.00 for double the amount of the security deposit and the \$100.00 filing fee. I grant the tenants a monetary order for this amount. This order must be served on the landlord. Should the landlord fail to comply with this monetary order it may be filed in the Provincial Court (Small Claims) 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 9, 2020

Residential Tenancy Branch