



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution by direct request, made on April 21, 2020 (the "Application"). On May 5, 2020 the Landlord applied for a review consideration of the original decision and order dated April 23, 2020. The Landlord was successful in their Application for review and on May 9, 2020 a new hearing was granted. The review hearing was held on June 18, 2020. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlords return all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant and the Landlord D.M. attended the review hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to an order that the Landlords return all or part of the security deposit and/or pet damage deposit, pursuant to section 38 of the *Act*?
2. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

The parties testified and agreed that the tenancy began on October 1, 2017. Near the end of the tenancy, the Tenant was required to pay rent in the amount of \$1,500.00 to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$750.00 and a pet damage deposit in the amount of \$750.00. The tenancy ended on January 1, 2020.

The Tenant testified that the Landlords intended on building a new home and rather than serving the Tenant with a formal notice, the parties formed a verbal agreement in which the Landlords would compensate the Tenant \$1,000.00 for four months, as well as a free month of rent in the amount of \$1,500.00. The Tenant stated that he received a cheque from the Landlord in the amount of \$4,500.00 dated January 3, 2020. The Tenant stated he received another cheque in the amount of \$1,000.00 dated January 6, 2020. The Tenant stated that these cheques were successfully deposited and were in relation to the compensation that was owed to the Tenant. The Tenant provided a copy of the cheques in support.

The Tenant stated that he received a third cheque in the amount of \$1,500.00 dated January 15, 2020 which was marked as "return of security deposit". The Tenant stated that he was instructed to not deposit the cheque until such a time that the Landlords knew the amount of an outstanding bill that was owed by the Tenant to the Landlords. The Tenant stated that he did not hear back from the Landlords as to how much was owed for utilities, therefore, he decided to deposit the cheque containing his security deposit which was returned as NSF. The Tenant provided a copy of the third cheque in support.

The Tenant stated that he contacted the Landlords regarding the return of the deposit. The Tenant stated that he learned that the outstanding utility bill was \$102.00 which the parties agreed to deduct from the Tenant's deposit. The Tenant stated that the Landlord returned \$398.00 to the Tenant on February 20, 2020.

The Tenant stated that he was still owed \$1,000.00 which represents the remaining portion of the Tenant's deposits. The Tenant stated that he provided the Landlords with his forwarding address via registered mail on March 27, 2020. The Tenant provided a copy of the registered mail receipt in support. The Tenant stated that he has not consented to the Landlord retaining \$1,000.00 and that he has not yet received any further repayments from the Landlords.

In response, the Landlord stated that the Landlords did not serve the Tenant with a notice to end tenancy. The Landlord stated that the parties had agreed to the Tenant receiving compensation, however, the Landlord stated that the cheque in the amount of \$4,500.00 was the full amount of compensation owed to the Tenant. The Landlord stated that the cheque in the amount of \$1,000.00 dated January 6, 2020 was a portion of the Tenant's deposit that was returned to him. The Landlord stated that the parties agreed to a deduction from the Tenant's deposit in the amount of \$102.00 for utilities. The Landlord stated that she returned the remaining portion of the Tenant's deposits in the amount of \$398.00 on February 20, 2020. The Landlord confirmed having received the Tenant's forwarding address on April 1, 2020, however, the Landlord doesn't feel as though any further amount is owed to the Tenant.

Analysis

Based on the documentary evidence before me for consideration 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 deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

In this case, the Tenant vacated the rental unit on January 1, 2020 and provided the Landlords with his forwarding address by registered mail on March 27, 2020. The Landlord confirmed receipt of the Tenant's forwarding address on April 1, 2020.

I accept that the Tenant received two cheques in the amount of; \$4,500.00 dated January 3, 2020, and \$1,000.00 dated January 6, 2020. I find that the cheques do not indicate what the payments are for, but were cashed by the Tenant. During the hearing, the Tenant stated that both cheques relate to compensation. The Landlord stated that \$4,500.00 cheque was for compensation, while the \$1,000.00 was a portion of the Tenant's deposits.

I accept that the parties had a verbal agreement between them regarding compensation owed to the Tenant in exchange for moving out of the rental unit. I find that neither party provided sufficient evidence to confirm the terms of the agreement between the parties.

I accept that the Landlord provided the Tenant with a third cheque in the amount of \$1,500.00 dated January 15, 2020 which was marked as "return of security deposit". The Tenant stated that the cheque was returned as NSF. Based on this evidence, I find that it is more likely than not, that as of January 15, 2020 the Tenant was owed \$1,500.00 for the return of his security deposit and pet damage deposit as was indicated on the cheque that was provided to the Tenant by the Landlords.

I accept that the cheque in the amount of \$1,500.00 dated January 15, 2020 was returned as NSF. I accept that the parties agreed to a deduction of \$102.00 for utilities and accept that the Landlords provided the Tenant with a payment of \$398.00 on February 20, 2020.

As there is no evidence before me that that the Landlords were entitled to retain all or a portion of the security deposit under sections 38(3) or 38(4) of the Act, I find pursuant to section 38(1) of the *Act*, that the Landlords had until April 16, 2020 to repay the remaining deposit in the amount of \$1,000.00 to the Tenant, or make an application for dispute resolution if the Landlords felt entitled to retaining this portion. The Landlords did neither.

In light of the above, and pursuant to section 38(6) of the *Act*, I find the Tenant is entitled to an award of double the amount of the remaining portion of the security deposit following the agreed upon deduction ($\$1,000.00 \times 2 = \$2,000.00$).

Having been successful, I also find the Tenant is entitled to recover the \$100.00 filing fee paid to make the Application.

In light of the above, I confirm the original decision and order dated April 23, 2020.

Conclusion

The Landlords have breached Section 38 of the *Act*. The decision and order granted by the Arbitrator in the original decision dated April 23, 2020 are confirmed and may be enforced.

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: June 18, 2020

Residential Tenancy Branch