



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "Act"). The Tenant applied for the return of their security deposit, and to recover their filing fee. The matter was set for a conference call.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenant and the Landlord testified that they received each others documentary evidence that I have before me.

I have reviewed all evidence and testimony 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

- Has there been a breach of Section 38 of the *Act* by the Landlord?
- Is the Tenant entitled to the return of their security deposit?
- Is the Tenant entitled to recover the filing fee for this application?

Background and Evidence

The Tenancy agreement shows that the tenancy began on June 1, 2003, as a month to month tenancy, and that a \$750.00 security and pet damage deposit (the deposit) had been paid to the Landlord. The parties agreed that by the end of tenancy, the monthly

rent had been \$830.00 due by the fifth day of each month. It was also agreed that the tenancy ended on June 10, 2018.

Both parties agreed that the Tenant provided the Landlord with her forwarding address on July 4, 2018, and that at no time had the Landlord been given written permission to keep the deposits.

The Landlord testified that he had not returned the deposit to the Tenant within the required timeline. The Landlord also testified that as of the date of this hearing, they had not filed an Application for Dispute Resolution claiming against the deposit.

Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposits or repay the security deposit and pet damage deposit to the tenant.

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant **with interest** calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I accept the agreed-upon testimony of these parties and find that this tenancy ended on June 10, 2018, and that the Landlord was in receipt of the Tenant's forwarding address as of July 4, 2018. Accordingly, the Landlord had until July 19, 2018 to comply with section 38(1) of the *Act* by either repaying the deposits in full to the Tenant or submitting

an Application for Dispute resolution to claim against the deposits. The Landlords, in this case, did neither.

At no time does a landlord have the right to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the landlord and the tenant are unable to agree, in writing, to the repayment of the security deposit or that deductions be made, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that the landlord thinks they are entitled to keep even a small portion of the deposit, based on unproven claims.

I find that the Landlord breached section 38 (1) of the *Act* by not returning the Tenant's deposit or filing a claim against the deposit within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

- 38 (6)** If a landlord does not comply with subsection (1), the landlord
- (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, I find that pursuant to section 38(6) of the *Act*, the Tenant has successfully proven that they are entitled to the return of double the deposit, in the amount of \$1,500.00. I also find that, pursuant to section 38(1) of the *Act*, the Tenant is entitled to \$26.56 in interest, which has been calculated in accordance with the Residential Tenancy Regulations.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has have been successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I find that the Landlord breached section 38 of the *Act* when they failed to repay or make a claim against the security deposit and pet damage deposit as required by the *Act*.

I find for the Tenant pursuant to sections 38 and 72 of the *Act*. I grant the Tenant a **Monetary Order** in the amount of **\$1,626.56**. The Tenant is provided with this Order in the above terms, and the Landlords must be served with this Order as soon as possible. Should the Landlords 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: June 30, 2020

Residential Tenancy Branch