



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR, FFT

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 38.1 of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the tenant for a Monetary Order seeking the return of her security deposit and pet damage deposit (collectively, the “deposits”).

The tenant submitted a signed “Proof of Service of the Tenant’s Notice of Direct Request Proceeding” form which declares that on May 28, 2020 the tenant served the landlord with the Notice of Direct Request Proceeding, along with copies of supporting documents, via email.

On March 30, 2020, the Executive Director of the Residential Tenancy Branch (“RTB”) authorized a *Director’s Order* which, pursuant to sections 71(2)(b) and (c) of the *Residential Tenancy Act*, orders 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 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*

Based on the written submissions of the landlord, and pursuant to the above-noted *Director's Order*, and pursuant to sections 71(2)(b) and (c) of the Act, I find that the landlord is deemed to have received the Direct Request Proceeding documents on May 31, 2020, three days after they were sent to the landlord by the tenant by way of email.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of all or a portion of her security deposit pursuant to section 38 of the Act? If so, should it be doubled?

Is the tenant entitled to a monetary award for the return of all or a portion of her pet damage deposit pursuant to section 38 of the Act? If so, should it be doubled?

Is the tenant entitled to recover the filing fee for this application from the landlord pursuant to section 72 of the Act?

Background and Evidence

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

On the tenant's Application for Dispute Resolution by Direct Request (the "application"), the tenant has requested a Monetary Order seeking a return of her security deposit and pet damage deposit in the amount of \$1,125.00.

On the application, the tenant attested that the tenancy ended on March 31, 2020, the date on which the tenant vacated the rental unit, subsequent to a tenant's notice to end the tenancy.

The tenant submitted, in part, the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant, indicating a monthly rent of \$1,900.00, due on the first day of each

month. The tenancy agreement depicts that the tenant was required to pay a security deposit in the amount of \$925.00 and a pet damage deposit of \$200.00;

- A copy of a Tenant's Monetary Order Worksheet for an Expedited Return of Security Deposit and/or Pet Damage Deposit (the Monetary Order Worksheet) showing the amount of the security deposit and pet damage deposit paid by the tenant and the amount sought in return by the tenant. The tenant asserts that she did not agree to any authorized deduction from either the security deposit or pet damage deposit, and also states that there is no authorized deduction previously granted by an arbitrator permitting the landlord to retain any amount of the security deposit or pet damage deposit. The tenant attested that she is not aware of any monetary order made against the security deposit or pet damage deposit and is not aware of any monetary order for the tenant to pay an amount to the landlord that remains unpaid. The tenant seeks the full return of the security deposit in the amount of \$925.00 and the full return of the pet damage deposit in the amount of \$200.00.

On the Monetary Order Worksheet, the tenant provides that she and the landlord participated in a move-in condition inspection. The tenant stated that she was provided a copy of a condition inspection report by the landlord pursuant to the move-in condition inspection.

On the Monetary Order Worksheet, with respect to matters related to the end of the tenancy, the tenant attested that she was not given at least one opportunity to participate in a move-out condition inspection by the landlord. The tenant additionally attested that neither she nor an authorized representative participated in a move-out condition inspection as the landlord did not provide the tenant an opportunity to participate in a move-out condition inspection. The tenant attested that the landlord did not want to attend the rental unit to conduct a move-out condition inspection in the presence of the tenant. The tenant stated that after the tenant had vacated the rental unit, the landlord inspected the rental unit alone and provided the tenant with a copy of the move-out condition inspection report. The tenant stated that she does not agree with the landlord's findings with respect to purported damage to the rental unit.

The tenant provided a copy of a "Tenant's Notice of Forwarding Address for the Return of Security Deposit" form ("forwarding address form"). The tenant stated that she provided her forwarding address in writing on the forwarding address form.

The tenant also provided a copy of a "Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form" (Proof of Service of the Forwarding Address form) which depicts that the tenant served the forwarding address form containing her forwarding address by way of registered mail addressed to the landlord on April 09, 2020. The tenant provided a copy of the Canada Post Customer Receipt and transaction receipt containing the Tracking Number to confirm this mailing.

The tenant also provided a copy of a document from Canada Post which depicts the tracking history associated with the registered mail item.

Analysis

I have reviewed all documentary evidence provided by the tenant. Section 90 of the Act provides that because the forwarding address form containing the tenant's forwarding address was served by registered mail, the landlord is deemed to have received the forwarding address form containing the tenant's forwarding address five days after its mailing. In accordance with sections 88 and 90 of the Act, I find that the landlord is deemed to have received the forwarding address form containing the tenant's forwarding address on April 14, 2020, five days after its registered mailing.

I accept the following declarations made by the tenant on the Monetary Order Worksheet:

- The tenant has not provided consent for the landlord to keep all or part of the security deposit or pet damage deposit;
- There are no outstanding Monetary Orders against the tenant for this tenancy; and
- The tenant has not extinguished her right to the security deposit in accordance with sections 24(1) and 36(1) of the Act.

Based on the declarations provided by the tenant, I find that the landlord did not have the tenant's written consent to retain any portion of the security deposit or pet damage deposit.

I have reviewed all documentary evidence and I find that the tenant paid a security deposit in the amount of \$925.00 and a pet damage deposit in the amount of \$200.00 as indicated in the tenancy agreement.

I accept the tenant's statement on the Monetary Order Worksheet that the tenancy ended on March 31, 2020.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The landlord may only keep all or a portion of the security deposit or pet damage deposit through the authority of the Act, such as an order from an arbitrator, or the written agreement of the tenant.

Section 38(1) of the Act requires the landlord to either return a tenant's security deposit and/or pet damage deposit in full or file for dispute resolution for authorization to retain the deposit(s) 15 days after the *later* of the end of a tenancy, or upon receipt of the tenant's forwarding address in writing.

If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit and/or the pet damage deposit. There are exceptions to this outlined in sections 38(2) to 38(4) of the Act. A landlord may also under sections 38(3) and 38(4) retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator or if the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant.

Based on the declarations provided by the tenant, I find that the rights of the tenant to seek the return of her security deposit and pet damage deposit have not been extinguished.

I find that the landlord did not adhere to the requirements of section 38(1) of the Act, as the landlord did not return the security deposit in the amount of \$925.00 and the pet damage deposit of \$200.00, as requested by the tenant, within 15 days of April 14, 2020 (the date on which the landlord is deemed to have received the tenant's forwarding address), which is the later of the dates as stated in sections 38(1)(a) and 38(1)(b) of the Act.

There is no evidence before me to show that the landlord applied for dispute resolution claiming against the security deposit or pet damage deposit within 15 days following the conclusion of the tenancy or after receiving the tenant's forwarding address.

I find that there is no evidence before me to demonstrate that the landlord received the tenant's written authorization to retain all, or a portion of either the security deposit or pet damage deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a) of the Act, nor did the landlord receive an order from an Arbitrator enabling her to do so.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

- (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.

Pursuant to section 38(6)(b) of the Act, a landlord is required to pay a monetary award equivalent to double the value of the security deposit if a landlord does not comply with the provisions of section 38 of the Act. I find that the landlord failed to adhere to section 38(1) of the Act.

The language of section 38(6)(b) is mandatory. As the landlord has failed to comply with section 38(1), I must order that the landlord pay the tenant double the amount of the security deposit and pet damage deposit.

Residential Tenancy Policy Guideline 17 states that “unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit.” However, the tenant has not provided any such waiver; therefore the provisions of section 38(6)(b) must be applied.

The tenant is therefore entitled to a monetary award in the amount of \$2,250.00, representing a doubling of the tenant’s unreturned security deposit (\$925.00 x 2), and a doubling of the tenant’s unreturned pet damage deposit (\$200.00 x 2).

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Pursuant to sections 38, 67, and 72 of the Act , I issue a Monetary Order in the tenant’s favour in the amount of \$2,350.00 against the landlord, calculated as follows:

Item	Amount
Doubling of unreturned Security Deposit (\$925.00 x 2)	\$1,850.00
Doubling of unreturned Pet Damage Deposit (\$200.00 x 2)	\$400.00
Recovery of Filing Fee	\$100.00
Total Monetary Award to Tenant	\$2,350.00

The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord(s) 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 01, 2020

Residential Tenancy Branch