



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFL

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38 of the *Act*.
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72 of the *Act*.

The landlord CL and tenant LJ appeared at the hearing and were given the opportunity to make submissions as well as present affirmed testimony and documentary evidence.

The landlord confirmed receipt of the tenant's application for Dispute Resolution and receipt of the evidentiary package after the documents were sent by Canada Post registered mail on March 13, 2020. Pursuant to sections 88 and 89 of the *Act*, the landlord is found to have been served with all the documents.

The tenant confirmed receipt of the landlord's two evidentiary packages after they were sent to the tenant by Canada Post registered mail on March 25, 2020. Pursuant to sections 88 and 89 of the *Act*. I find that the parties have been served in accordance with the *Act*.

The Canada Post Tracking numbers are listed on the cover page of this decision.

Issues to be Decided

Is the tenant entitled to the following?

- an order for the landlord to return the security deposit pursuant to section 38 of the *Act*.

- an order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72 of the *Act*.

Background and Evidence

While I have turned my mind to the documentary evidence and the testimonies of the tenant and landlord, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the proceedings and my findings are set out below.

The tenant testified that this tenancy began on August 2012 and ended on February 1, 2020. Monthly rent in the amount of \$1,350.00 was payable each month. The tenant paid a security deposit of \$590.00 which is held in Trust by the landlord. A copy of the written tenancy agreement was submitted in evidence.

The landlord affirmed a walk thorough the rental property was conducted with the tenant on February 2, 2020. Both parties refused to sign any documents, including the move out condition inspection report as both parties could not agree to the cleanliness of the unit.

The landlord affirmed that she gave the tenant back her post-dated cheques. The tenant returned the keys of the rental unit back to the landlord.

The tenant affirmed that she provided the landlord with her forwarding address at the walk through on February 2, 2020. The tenant affirmed that the landlord had failed to provide her security deposit and did not have her written consent to keep the security deposit. The tenant was also seeking the recovery of her filing fee.

There was discussion between the parties regarding the leak in the apartment and damage to the rental unit below. The tenant affirmed that the leak in the shower was not her fault and the insurance had paid the landlord for the remediation work in the rental unit.

There was extensive discussion with regards to the state of the rental unit on vacating. The landlord affirmed that the rental unit was left in a dirty condition and there was the issue of mice traps in the unit including dirty floors and lint in the laundry room. The landlord affirmed she instructed a cleaning company and submitted a copy of the cleaning invoice for \$252.00.

The landlord affirmed that she had not submitted an application to the Residential Tenancy Branch for the damage and cleaning.

The tenant denied she had left the rental unit in a “dirty condition” and affirmed a friend assisted her to steam clean the apartment. The tenant submitted photographs of the stove, fridge and further photographs indicating that she had left the rental unit in a clean condition.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant’s security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant’s provision of a 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.

However, this provision does not apply if the landlord has obtained the tenant’s written authorization to retain all or a portion of the security deposit. The tenant testified that she has not authorized the landlord to retain any portion of the security deposit.

Section C(3) of Residential Tenancy Branch 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 if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant’s forwarding address is received in writing.

Based on the testimony of the tenant, I find that the landlord was served with the tenant’s forwarding address in writing during the condition move out inspection when the tenant handed the letter of her forwarding address to the landlord personally on February 2, 2020.

I find the landlord had 15 days from when the tenant vacated the rental property or was provided a forwarding address to return the security deposit to the tenant or file an application for Dispute Resolution Proceedings.

Based on the evidence before me, I find that the landlord did not return the tenant's security deposit within 15 days of the receipt of the forwarding address on February 2, 2020.

I find that the landlord did not file an application with the Residential Tenancy Branch to retain the tenant's security deposit within 15 days of receiving the tenant's forwarding address. Therefore, pursuant to section 38 of the *Act* and Residential Tenancy Branch Policy Guideline 17, the tenant is entitled to receive double her security deposit.

As the tenant was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

A summary of the calculation of the award follows:

ITEM	AMOUNT
Security deposit	\$590.00
Doubling of security deposit - section 38(6)	\$590.00
Reimbursement of filing fee – section 72	\$100.00
Total due to tenant	\$1,280.00

Conclusion

I grant the tenant a monetary order pursuant to section 38 in the amount of **\$1,280.00** as described above.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file, the order in the Provincial Court (Small Claims) to be 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: July 15, 2020