Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   MNSDS-DR

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The tenant applied for the return of double their security deposit through the Direct Request process. On June 12, 2020, an adjudicator wrote an Interim Decision, adjourning this matter to a participatory hearing due to a possible jurisdictional issue. The June 12, 2020 Interim Decision should be read in conjunction with this decision.

On this date, July 13, 2020, the participatory hearing was held, and the tenant and landlord attended the teleconference hearing and were affirmed. The hearing process was explained to the parties and an opportunity to ask questions was provided. During the hearing the parties provided affirmed testimony and their documentary evidence, if the party submitted documentary evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Neither party raised any concerns regarding documentary evidence.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to both parties. In addition, the tenant was advised that the monetary order will be sent by email to the tenant only for service on the landlord.

Issue to be Decided

- Is the tenant entitled to the return of double their security deposit under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on November 18, 2018 and reverted to a month to month tenancy after November 30, 2019. The monthly rent was $900.00 and was due on the first day of each month. The parties confirmed that the tenant paid a security deposit of $450.00 at the start of the tenancy.

Firstly, the parties agreed during the hearing that the tenant rented the master bedroom in the home and that the landlord did not occupy the rental home during the tenancy. As a result, I find I have jurisdiction over this dispute.

Secondly, the parties agreed that the tenant vacated the rental unit on April 20, 2020 and provided their written forwarding address to the landlord on April 27, 2020, which the landlord confirmed having received. The landlord testified that they withheld $100.00 of the tenant's $450.00 security deposit due to cardboard being left in the rental unit and returned $350.00 by e-transfer, which the tenant confirmed they deposited on May 8, 2020. The tenant is seeking double the return of the security deposit, less what the landlord has returned.

The landlord confirmed that they did not have the written permission of the tenant to retain any amount of the security deposit. The landlord also testified that the landlord has not filed an application to claim against the tenant's security deposit.

Analysis

Based on the documentary evidence presented and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Having considered the documentary evidence and testimony, sections 38(1) and 38(6) of the Act apply and state:

> **Return of security deposit and pet damage deposit**
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> **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.
>
> (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.**
>
> [Emphasis added]

In the matter before me, the landlord confirmed that they did not claim against the tenant's security deposit at all or return more than the $350.00 portion of the tenant's $450.00 security deposit. The landlord also confirmed they did not have written consent from the tenant to retain any portion of the security deposit. Under section 38 of the Act, the landlord has 15 days to return the tenant's security deposit from the **later** of the end of tenancy or the written forwarding address and I find in the matter before me, as the written forwarding address was received by the landlord on or about April 27, 2020 and the end of tenancy date was April 20, 2020, I find the later date is April 27, 2020. Therefore, I find the landlord had until May 12, 2020 to return the tenant's full security deposit of $450.00 or make a claim against the security deposit. The landlord instead, retained $100.00 without permission or any authority under the Act.

Therefore, I find the landlord breached section 38(1) of the Act and I find the tenant is entitled to the return of **double** their $450.00 security deposit for a total of $900.00 less the $350.00 amount already paid for a balance owing to the tenant in the amount of **$550.00**. I note that the security deposit has accrued $0.00 in interest since the start of the tenancy. I find the tenant has met the burden of proof based on the above.

Monetary Order – I find that the tenant has established a total monetary claim in the amount of **$550.00** as indicated above. I grant the tenant a monetary order pursuant to section 67 of the Act in the amount of $550.00.

I caution the landlord not to breach section 38(1) of Act in the future.

Conclusion

The tenant's application is fully successful.

The tenant has established a total monetary claim of $550.00 as indicated above.

The landlord has been cautioned to comply with section 38(1) of the Act in the future.

This decision will be emailed to both parties. The monetary order will be emailed to the tenant only for service on the landlord.

Should the tenant require enforcement of this order, this order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 13, 2020

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Residential Tenancy Branch