



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of the security deposit pursuant to section 38; and
- authorization to recover the filing fee from the landlord.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The landlords testified that they have been served with the tenant's application and evidence and confirmed they have not served any materials. Based on the testimonies I find the landlords were duly served with the tenant's materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This periodic tenancy began in January, 2018. Monthly rent was \$720.00 payable on the first of each month. A security deposit of \$360.00 was paid at the start of the tenancy and is still held by the landlord. The tenancy ended on June 30, 2019. The tenant provided a forwarding address by letter dated July 15, 2019.

The parties disagree on whether a condition inspection report was prepared for this tenancy. The tenant submits that no condition inspection report was prepared at any time. The landlords submit that the parties inspected the suite together and made reference to subsequent email correspondence referencing a guide to how a suite should be cleaned with comments.

The tenant testified that they did not give written authorization that the landlord may retain any portion of the security deposit for this tenancy. The landlord submits that there was a verbal agreement that they may retain the deposit and in any event the rental unit required cleaning and they are entitled to retain the full deposit for cleaning costs.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 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 must 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 permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the evidence of the parties that this tenancy ended on June 30, 2019 and the tenant gave the landlord the forwarding address in writing by a letter dated July 15, 2019. The landlord did not return the security deposit to the tenant nor did they file an application for dispute resolution for authorization to retain the deposit within 15 days of July 15, 2019 as provided under the *Act*.

The landlord submits that they incurred costs for work done to the rental unit but I find this to be irrelevant. The landlord has not filed an application for authorization to recover any cost of repairs from the security deposit. The undisputed evidence of the parties is that the tenant has not provided written authorization that the landlord may deduct any portion of the security deposit.

While the landlord submits that there was a verbal agreement between the parties I find little evidence in support of this claim, and in any event pursuant to the *Act*, a landlord requires written permission to retain the deposit.

If there was an agreement between the parties it would be reasonable to expect it to be recorded in writing. In the absence of written authorization I find the landlords had no basis to withhold the security deposit for this tenancy. If the landlords had concerns about the condition of the rental unit at the end of the tenancy and sought to recover their losses from the security deposit they were required to have filed an application for dispute resolution in accordance with the *Act*. A landlord cannot simply withhold the security deposit for a tenancy without following the appropriate legislative steps. I find that the landlords have failed to return the security deposit for this tenancy to the tenant without the tenant's written authorization or filing an application to claim against the deposit.

Furthermore, I find that the parties did not prepare a condition inspection report in the proper manner at any time during the tenancy. The landlords made some reference to inspecting the suite together with the tenant and that they used an online guide for what should be cleaned. A portion of the webpage referenced with some handwritten notes was submitted into documentary evidence. I find that the portion of the document submitted does not meet the requirements of a proper condition inspection report as outlined in section 20(1) of the Residential Tenancy Regulations. I find that these notes are an inadequate substitute for a proper condition inspection report and accept the evidence of the tenant that no report was prepared in accordance with the statutory requirements.

Section 36 of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if they do not comply with the requirements of section 35 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

Based on the undisputed evidence before me, I find that the landlords have neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$720.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

As the tenant was successful in their application, they are entitled to recovery of the \$100.00 filing fee.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$820.00 against the landlords. The tenant is provided with a Monetary 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: August 24, 2020

Residential Tenancy Branch