



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, 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, for a monetary order for monetary losses or other money owed, and to recover their filing fee. The matter was set for a conference call.

Both 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 other's 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 a monetary order for monetary losses or other money owed?
- Is the Tenant entitled to recover the filing fee for this application?

Background and Evidence

The Tenancy agreement shows that this tenancy began on March 1, 2020, as a one-year fixed term tenancy. Rent in the amount of \$1,140.00 was to be paid by the first day of each month, and that the Tenant paid the Landlord a \$570.00 security deposit (the "deposit"). It was also agreed that the Tenants moved out of the rental unit on April 15, 2020.

Both parties agreed that the Tenant provided the Landlord with their forwarding address on April 17, 2020, and that at no time had the Landlord been given written permission to keep the deposit. The parties also agreed that \$270.00 of the security deposit had been returned to the Tenant.

The Landlord testified that they had not returned the full deposit to the Tenant, within the required timeline, due to the Tenant breaking the fixed term tenancy agreement early and the liquidated damages clause in the tenancy agreement. The Landlord also testified that they had informed the Tenant of the reasons why they would be keeping a portion of the deposit. The Landlord testified that as of the date of this hearing, they had not filed an Application for Dispute Resolution claiming against the deposit.

The Tenant testified that there had been a rodent infestation in the rental unit and that they had a mouse phobia, so they could not live in the rental unit. The Tenant testified that they had asked the Landlord if there were any pest problem in the building before, they signed the tenancy agreement, and the Landlord had advised them that there may be silverfish but no other problems.

The Tenant testified that they believe the Landlord knew about the pest problem and had lied to them to get them to take the rental unit. The Tenant testified that they text messaged the Landlord several times to deal with the rodent infestation, but that the Landlord would only put mouse traps out and had refused to call a professional to treat the infestation. The Tenant testified that they ended this tenancy early due to the Landlord's refusal to treat the rodent infestation. The Tenant is requesting the return of all their rent paid for March and April 2020 due to the Landlord's dishonesty about the rodent infestation in the rental building.

The Landlord testified that the Tenant did inquire of there were any pest problems in the rental unit and that at that time, they were only aware of silverfish, which they had reported to the Tenant. The Landlord testified that they received the first report of a mouse in the rental unit, from the Tenant, on March 26, 2020. The Landlord testified

that they attended the rental unit right away, setting out traps and checking to access point, and evidence of rodents.

The Landlord testified that they never found any evidence of rodents in the rental unit and that there was not a rodent infestation in the rental unit or the building. The Landlord testified that occasionally a renter would report seeing a mouse in the building, the last report was about a year ago, and that they always did a throughout inspection to check for access point and droppings after any report. The Landlord testified that they believe that the occasional rodent may come in through an open window or door but that there is not an infestation in the rental building.

The Landlord also testified that the Tenant had not provided any proof of a mouse in the rental unit; no mouse droppings, no evidence of chewing food items, no mice in traps, or pictures of mice, just a verbal claim that there had been a mouse. The Landlord testified that they do not believe that there was a mouse in the rental unit.

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 April 15, 2020, the date the Tenant moved out of the rental unit and that the Tenant provided their forward address to the Landlord on April 17, 2020. Accordingly, the Landlord had until May 2, 2020, 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 Landlord, 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 deposits or filing a claim against the deposits 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 their entitlement to the return of double their deposit. I find for the Tenant, in the amount of \$870.00, consisting of \$1,140.00 in the doubled deposit, less the \$270.00 that had already been returned to the Tenant.

The Tenant has also applied for the return of all their rent paid for the months of March and April 2020, in the amount of \$2,280.00, due to the Landlord not advising them of a pre-existing rodent infestation in the rental building. I have reviewed the Tenant's

testimony and documentary evidence, and I find that there is insufficient evidence to satisfy me that the Landlord had pre-existing knowledge of a rodent infestation in the rental building. Therefore, I dismiss the Tenant's claim for the recovery of the rent paid for March and April 2020.

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 **\$970.00**. The Tenant is provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. Should the Landlord 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: September 4, 2020

Residential Tenancy Branch