



Dispute Resolution Services

Page: 1

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 compensation for my monetary loss or other money owed, and to recover their filing fee. The matter was set for a conference call.

One of the Landlords 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.

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 compensation for my monetary loss or other money owed?
- Is the Tenant entitled to recover the filing fee for this application?

Background and Evidence

Both parties testified that the Tenant had paid a security deposit of \$400.00 on January 14, 2019 and had paid rent in the amount of \$800.00 on January 15, 2019, for a tenancy that they agreed would start as of February 1, 2019. Both parties also agreed that no tenancy agreement had been signed between these parties.

Both parties agreed that the Tenant was provided with a key to the rental unit on January 19, 2020.

The Tenant testified that they had initially viewed the rental unit on January 14, 2019, they had expressed concerns regarding how dirty the rental unit was and the presence of a log in the walkway that they saw as a safety hazard. The Tenant testified that they asked the Landlords to have the rental unit cleaned and the log removed before their tenancy began and that the Landlords had agreed to clean the unit and remove the log.

The parties agreed that on January 19, 2019, the Tenant returned to the rental unit and had been given the key to the unit.

The Tenant testified that when they went into the rental unit on January 19, 2019, the rental unit was still dirty, and the log in the walkway had not been removed. The Tenant testified that they again spoke to the Landlords about having the rental unit cleaned and the log removed, but that the Landlords now refused to clean or have the log removed. The Tenant testified that they verbally advised the Landlords that day that they would not be moving in and had attempted to return the key they had been given but that the Landlords had refused to take the key back.

The Tenant testified that they served the Landlords with written notice that they would not be moving in, on January 24, 2019, by posting it to the front door of the Landlords' home, and that the key to the rental unit had been taped to the letter. The Tenant submitted a copy of the letter and a picture of the letter posted to the front door of the Landlords' home into documentary evidence.

The Tenant also testified that they had provided their forwarding address to the Landlords on January 24, 2019, in the letter they had posted to their front door.

The Landlord testified that they had received the Tenant's letter and the key to the rental unit on January 24, 2019. The Landlord testified that they did not know if the

Tenant had moved into the rental unit or not between January 19, 2019, to January 24, 2019.

The Tenant is requesting the return of both the \$400.00 security deposit and the pre-paid rent in the amount of \$800.00, as they never moved into the rental unit.

The Landlord testified that they had kept both the prepaid rent and security deposit for this tenancy due to the Tenant not providing them with a month's notice as required.

The Landlord confirmed that they had are still holding the security deposit for this tenancy and that they had not filed a claim against the deposit as of the date of this hearing.

Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

After reviewing the testimony provided by these parties during these proceedings, I find that these parties entered into a verbal tenancy agreement, on January 14, 2019, for a month to month tenancy, with an agreed to move-in date of February 1, 2019.

I also accept the agreed-upon testimony of these parties that this Tenant had pre-paid the Landlord the \$400.00 security deposit and \$800.00 February rent for this tenancy.

Section 45(2)(b) of the *Act* states that a tenant cannot end a tenancy agreement earlier than the date specified in the tenancy agreement or, in a month to month tenancy, without giving at least one clear rental period notice.

Tenant's notice

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I accept the agreed-upon testimony of these parties that the Tenant gave written notice to the Landlords, on January 24, 2019, that they would not be moving into the rental unit. Based on the date that the Tenant's notice to end tenancy had been served on the Landlords, I find that the earliest dated that this tenancy could have ended, in accordance with the *Act*, was February 28, 2019.

Accordingly, I find that the rent for February 2019 was due under this tenancy agreement and that the Landlords were within their rights to retain the pre-paid rent for the month of February 2019 for this tenancy.

I acknowledge the Tenant's arguments that the rental unit was dirty and there was a safety hazard in the walkway of the rental unit; however, I find that an unclean rental unit and the presence of a log in a walkway to be insufficient cause to end a tenancy without sufficient notice.

As of the security deposit, 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.

As determined above, I find that this tenancy ended on February 28, 2019. I accept the agreed-upon testimony of these parties that the Tenant provided their forwarding

address to the Landlords on January 24, 2019. Accordingly, the Landlords had until March 15, 2019, to comply with section 38(1) of the *Act* by either repaying the deposit in full to the Tenant or submitting an Application for Dispute resolution to claim against the deposits. The Landlords, 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 Landlords 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 there are entitled to the return of double their deposit. I find for the Tenant, in the amount of \$800.00, granting a monetary order for the return of double the security deposit for this tenancy.

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 **\$900.00**. The Tenant is provided with this 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: September 10, 2020

Residential Tenancy Branch