



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, MNSD, MNDCT**

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;
- a monetary award for damages and loss pursuant to section 67; 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 parties each testified that they were in receipt of the materials. Based on the testimonies I find each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to recover the filing fee from the landlord?

Is the tenant entitled to recovery of double the security deposit?

Background and Evidence

This periodic tenancy began in September, 2019. Monthly rent was \$1,650.00 payable on the first of each month. A security deposit of \$825.00 was paid at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at any time for this tenancy.

The tenancy ended in May, 2020. No Notice to End Tenancy in a prescribed form was issued by the landlord. The tenant provided a forwarding address to the landlord on May 3, 2020. The tenant did not authorize the landlord to retain any portion of the security deposit.

The landlord submits that the rental unit was left in poor condition and they incurred expenses to clean and rectify the rental property.

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 May 1, 2020 and the tenant gave the landlord the forwarding address in writing on May 3, 2020. 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 May 3, 2020 as provided under the *Act*.

The landlord submits that they incurred costs due to damage to the rental unit but have not filed an application for authorization to recover any costs incurred from the security deposit. The undisputed evidence of the parties is that the tenant has not authorized the landlord to deduct any portion of the security deposit.

If the landlord 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 landlord has failed to return the security deposit for this tenancy to the tenant without the tenant's authorization or filing an application to claim against the deposit.

Furthermore, the parties gave evidence that no condition inspection report was prepared at any time during the tenancy. 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 landlord has 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 \$1,650.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

While the tenant submits that they are entitled to an amount equivalent to one month's rent as they were issued a Notice to End Tenancy, I find insufficient evidence in support of this portion of the claim. While I accept that there was correspondence between the parties I do not find this to be a Notice to End Tenancy as set out in the *Act* and therefore no entitlement to a monetary award arises. I dismiss this portion of the tenant's claim without leave to reapply.

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 \$1,750.00. 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 28, 2020

Residential Tenancy Branch