



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on August 06, 2020 (the “Application”). The Tenant applied for return of double the security deposit and to recover the filing fee.

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties. The parties provided affirmed testimony.

The Tenant submitted evidence prior to the hearing. The Landlord did not. I addressed service of the hearing package and Tenant’s evidence and the Landlord confirmed receipt of these.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and all oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit?
2. Is the Tenant entitled to return of the filing fee?

Background and Evidence

The parties agreed there was a written tenancy agreement in this matter between the Landlord, Tenant and a second tenant. The parties agreed the tenancy started in 2012. The Tenant testified that the tenancy started September 01, 2012. The parties agreed the tenants paid a \$725.00 security deposit.

The parties agreed the tenants vacated the rental unit August 07, 2018.

The Landlord agreed he never returned the security deposit.

The Tenant testified that the tenants provided their forwarding address to the Landlord in writing in a letter that was left on the Landlord's door August 30, 2018. The Landlord testified that he does not recall this but must have received it. The Landlord also indicated this was a non-issue because the tenants had moved into a different unit in the building and he knew where they had moved to.

The parties agreed the Landlord did not have an outstanding monetary order against the tenants at the end of the tenancy.

The Landlord testified that the tenants did not agree in writing at the end of the tenancy that he could keep some or all of the security deposit. The Tenant testified that the tenants did agree to the Landlord keeping \$350.70 in an email. The Tenant confirmed she is agreeing to the Landlord keeping \$350.70 of the security deposit.

The Landlord confirmed he did not apply to the RTB to keep the security deposit.

The Landlord testified that he does not know if a move-in inspection was done and that the parties might have done a bit of a walk-through. The Landlord confirmed the tenants were not offered two opportunities to do a move-in inspection. The Tenant testified that no move-in inspection was done, and the tenants were not offered two opportunities to do a move-in inspection.

The parties agreed no move-out inspection was done and the tenants were not offered two opportunities to do a move-out inspection.

I allowed the parties to make further submissions once I had obtained the above information. However, I do not find it necessary to outline the further submissions here. The submissions mostly related to the condition of the rental unit at the end of the tenancy, the move-out date, cleanliness, damage and rent during the tenancy. As explained to the parties during the hearing, the issues raised are not relevant to the issue I must decide which is the application of section 38 of the *Residential Tenancy Act* (the "Act") to the circumstances outlined above.

Analysis

Section 38 of the *Act* sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

Section 38(1) of the *Act* requires a landlord to return the security deposit or claim against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this in sections 38(2) to 38(4) of the *Act*.

Given the testimony of the parties, I accept the tenants vacated the rental unit August 07, 2018. Pursuant to section 44(1)(d) of the *Act*, the tenancy ended August 07, 2018.

I am satisfied based on the testimony of the Tenant, photo of the forwarding address in evidence and photo of an envelope on a door in evidence that the tenants left their forwarding address on the Landlord's door August 30, 2018. I did not understand the Landlord to dispute this. I understood the Landlord to say he does not remember whether this occurred. Further, the Landlord acknowledged he must have received the forwarding address. In the circumstances, and pursuant to section 71(2)(c) of the *Act*, I am satisfied the forwarding address was sufficiently served on the Landlord considering section 88(g) of the *Act*. Pursuant to section 71(2)(b) of the *Act*, I am satisfied the Landlord received the forwarding address September 02, 2018 considering section 90(c) of the *Act*.

September 02, 2018 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from September 02, 2018 to repay the security deposit or file a claim with the RTB against it.

Given the testimony of the Landlord, I accept the Landlord never returned the security deposit.

Given the testimony of the Landlord, I accept the Landlord did not apply to the RTB to keep the security deposit.

Sections 38(2) to 38(4) of the *Act* state:

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1)

[tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant...

Given the testimony of the parties, I accept that the tenants were not offered two opportunities to do a move-in or move-out inspection and therefore find the tenants did not extinguish their right to the security deposit. Section 38(2) of the *Act* does not apply.

Given the testimony of the parties, I accept that the Landlord did not have an outstanding monetary order against the tenants at the end of the tenancy. Section 38(3) of the *Act* does not apply.

Given the testimony of the Tenant, I accept that the tenants did agree to the Landlord keeping \$350.70 of the security deposit. Pursuant to section 38(4)(a) of the *Act*, the Landlord was permitted to keep \$350.70 of the security deposit. However, the Landlord was not permitted to keep the remaining \$374.30.

Given the above, I find the Landlord failed to comply with section 38(1) of the *Act* in relation to \$374.30 of the security deposit. I find that none of the exceptions outlined in sections 38(2) to 38(4) of the *Act* applied to the remaining \$374.30 of the security deposit. Therefore, the Landlord is not permitted to claim against the remaining \$374.30 and must return double the security deposit to the Tenant pursuant to section 38(6) of the *Act*.

Policy Guideline 17 deals with security deposits and states at page three:

5. The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit...

Example B: A tenant paid \$400 as a security deposit. During the tenancy, the parties agreed that the landlord use \$100 from the security deposit towards the payment of rent one month. The landlord did not return any amount. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount that remained after the reduction of the security deposit during the tenancy. In this example, the amount of the monetary order is \$600.00 ($\$400 - \$100 = \300; $\$300 \times 2 = \600).

The above example applies here. The tenants paid a \$725.00 security deposit. The Tenant agreed the Landlord could keep \$350.70 of the security deposit. The Landlord has not returned any amount of the security deposit. The remaining \$374.30 of the security deposit is doubled which equals \$748.60. This is the amount the Tenant is entitled to. There is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

Given the Tenant was successful in the Application, the Tenant is entitled to recover the filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to \$848.60 and is issued a Monetary Order for this amount.

Conclusion

The Tenant is entitled to \$848.60 and is issued a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with the Order, the 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 *Act*.

Dated: November 27, 2020

Residential Tenancy Branch