



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on August 11, 2020 (the "Application"). The Tenant applied for return of the security deposit. This was an adjourned direct request.

X.S. appeared at the hearing for the Tenant. R.Z. and Z.L. appeared at the hearing for the Landlord. I explained the hearing process to the parties. The parties provided affirmed testimony.

X.S. provided the correct legal name for the Tenant which is reflected in the style of cause.

R.Z. confirmed the owner of the rental unit, S.W., should be named on the Application as the landlord. R.Z. confirmed S.W. knows about this hearing, knows R.Z. is appearing and confirmed she has authority to appear for S.W. and address the issues raised in the Application.

X.S. agreed to S.W. being named as the landlord and this is reflected in the style of cause.

During the hearing, X.S. confirmed the Tenant is seeking return of double the security deposit.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

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.

I note that during the hearing my computer froze and then shut down. I had told the parties to stay on the line if this happened. I called back into the hearing once able and the parties were still on the line. We continued with the hearing.

Issues to be Decided

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

Background and Evidence

A written tenancy agreement was submitted. It named S.W. as the landlord. It named J.F. and the Tenant as tenants. It related to the rental unit address. The tenancy started March 01, 2020 and was for a fixed term ending February 28, "2012". Rent was \$2,200.00 per month due on the first day of each month. It showed a security deposit of \$1,100.00 with "\$600.00" and "\$550.00" noted beside it. It was signed by S.W., J.F. and the Tenant.

The parties agreed J.F. and the Tenant rented separate bedrooms at the rental unit address. The parties agreed J.F. and the Tenant were not co-tenants and that their tenancies were meant to be separate tenancies where they were not responsible for the obligations of the other. The parties agreed J.F. and the Tenant paid separate security deposits and that the Tenant paid \$600.00. The parties agreed J.F. remained in the rental unit when the Tenant moved out.

The parties agreed the Tenant moved out of the rental unit March 21, 2020.

The parties agreed the Tenant provided her forwarding address April 15, 2020 by email. R.Z. confirmed receiving this email April 15, 2020.

The parties agreed on the following. The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

R.Z. confirmed the Landlord did not apply to the RTB to keep the security deposit.

The parties agreed the Landlord returned \$400.00 of the security deposit by cheque to the Tenant by mail in April. R.Z. and Z.L. testified that the cheque was dated April 15, 2020.

Z.L. testified that J.F. and the Tenant did a move-in inspection together. I understood R.Z. to say the Landlord gave J.F. authority to do a move-in on their behalf. X.S. denied that a move-in inspection was done.

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

Z.L. advised that the Landlord kept \$200.00 of the security deposit because of an issue with furniture in the rental unit, blinds and unpaid rent.

Analysis

Section 38 of the *Residential Tenancy Act* (the “*Act*”) sets out the obligations of a landlord in relation to security deposits held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit in full 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 there was a tenancy agreement between S.W. and the Tenant and that the Tenant paid a \$600.00 security deposit in relation to this tenancy. I also accept the Tenant and J.F. were not co-tenants.

Given the testimony of the parties, I accept the Tenant moved out of the rental unit March 21, 2020. Pursuant to section 44(1)(d) of the *Act*, the tenancy ended March 21, 2020.

Given the testimony of the parties, I accept R.Z. received the Tenant’s forwarding address on behalf of the Landlord April 15, 2020.

April 15, 2020 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from April 15, 2020 to repay the security deposit in full or file a claim with the RTB against the deposit.

Given the testimony of the parties, I accept the Landlord returned \$400.00 of the deposit April 15, 2020. However, the Landlord did not repay the security deposit in full as the Landlord still holds \$200.00 of the security deposit.

Given the testimony of R.Z., I find the Landlord did not file a claim with the RTB claiming against 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...

Pursuant to sections 24 and 36 of the *Act*, for the Tenant to have extinguished her right to the security deposit, the Landlord would have had to offer the Tenant two opportunities to do the move-in and move-out inspections and the Tenant would have had to not participated. Given the testimony of the parties about move-in and move-out inspections, I am not satisfied this occurred and am not satisfied the Tenant extinguished her right to the security deposit. Section 38(2) of the *Act* does not apply.

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

Given the testimony of the parties, I find the Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. Section 38(4) of the *Act* does not apply.

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

I note that, as explained to R.Z. and Z.L. at the hearing, if the Landlord thought the Tenant owed the Landlord money such that the Landlord should be entitled to keep some of the security deposit, the Landlord was required to file a claim against the security deposit with the RTB. The Landlord was not permitted to keep some of the security deposit in the circumstances described.

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 A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ($\$800 - \$275 = \525).

The above example applies here. The \$600.00 security deposit is doubled which equals \$1,200.00. The Landlord has returned \$400.00 of the security deposit to the Tenant so this amount is deducted. Therefore, the Landlord must return a further \$800.00 to the Tenant. There is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009. I issue the Tenant a monetary order for \$800.00.

Conclusion

The Tenant is entitled to \$800.00 and I issue the Tenant 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 26, 2020

Residential Tenancy Branch