



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with the tenant's application for return of double the security deposit and pet damage deposit. The tenants appeared at the hearing, however, there was no appearance on part of the landlord.

Since the landlord did not appear for the hearing, I explored service of the hearing documents upon the landlord. The tenants testified that they sent the hearing package to the landlord at her residence and service address, via registered mail, on August 26, 2020. The tenants orally provided the registered mail tracking number as proof of service (which I have recorded on the cover page of this decision) and a search of the tracking number shows the registered mail was successfully delivered on August 27, 2020. The tenants state the landlord did communicate with them after the registered mail was delivered by way of email and text messages.

I was satisfied the landlord was duly served with notification of this proceeding and I continued to hear from the tenants without the landlord present.

I noted that in completing the Application for Dispute Resolution the tenant requested compensation equivalent to triple the security deposit and pet damage deposit. The tenant confirmed that was an error and he is only seeking return of double the deposits and recovery of the filing fee. I amended the application accordingly.

It appears the landlord provided evidence for this proceeding; including: a copy of pages 1 through 3 of move-out inspection report evidence for this hearing and a letter purportedly written by the landlord on July 28, 2020. The tenants confirmed the landlord sent this to them as well. The tenants had provided the bottom portion of page 3 of the move out inspection report and I noted that this section of the move-out inspection

report contains the same information as provided on the landlord's copy. As such, I have relied upon the move-out inspection report.

With respect to letter dated July 28, 2020, this document was considered by me but it does not change the outcome of this proceeding for reasons provided in the analysis section of this decision.

Issue(s) to be Decided

1. Is the tenant entitled to return of double the security deposit and pet damage deposit?
2. Award of the filing fee.

Background and Evidence

The parties executed a written tenancy agreement set to commence on September 1, 2018 and end on August 31, 2020. The tenants paid a security deposit of \$800.00 and a pet damage deposit of \$800.00. The monthly rent was set at \$1600.00 payable on the first day of every month. The tenants provided a copy of their tenancy agreement for my review.

The tenants testified that they returned possession of the rental unit to the landlord on June 30, 2020. The parties participated in a move-in and move-out inspection together and the landlord prepared a move-in and move-out inspection report. The tenants submitted that they did not authorize the landlord to make any deductions from the security deposit or pet damage deposit and they provided their forwarding address to the landlord on the move-out inspection report on June 30, 2020. The tenants pointed to page 3 of the move-out inspection report in support of their position.

The tenants submitted that the landlord has not refunded any portion of their deposits to them and the landlord has not filed a Landlord's Application for Dispute Resolution to make a claim against their deposits.

In the letter dated July 28, 2020 the landlord demands payment of \$1795.00 for unpaid rent for July 2020 and August 2020 and utilities from the tenants, after deduction \$1600.00 for the deposits. The tenants did not agree that they owe the landlord; however, I did not permit further submissions on this matter since it is irrelevant to this proceeding for reasons provided in this decision.

Analysis

Section 38(1) of the Act provides that the landlord has 15 days, from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the landlord violates section 38(1) the landlord loses the right to make a claim against the tenant's deposit and the landlord must pay the tenant double the security deposit.

Section 44(1)(d) provides that a tenancy ends when a tenant vacates or abandons the rental unit. Based on the unopposed evidence before me, I find the tenancy ended on June 30, 2020 when the tenants vacated the rental unit and returned possession to the landlord. I make this finding based on the tenant's unopposed testimony and the move-out inspection report which shows the tenants moved out and returned the keys on June 30, 2020 and the move-out inspection was performed on June 30, 2020.

The move-out inspection report also provides space for the tenant to provide their forwarding address, in writing and this section is completed on both copies of the move-out inspection report provided to me.

To comply with section 38(1) of the Act, I find the landlord had until July 15, 2020 to either: refund the tenant's security deposit and pet damage deposit to the tenants, in full; or, file an Application for Dispute Resolution to make a claim against the tenant's deposits; or, get the tenant's written consent that the landlord may make deductions from the deposits or retain the deposits.

The tenants testified that they have not received any portion of their deposits back from the landlord. Nor, has the landlord filed an Application for Dispute Resolution to make a claim against their deposits.

As for written consent to make deductions from or retain the deposits, upon review of move-out inspection report, I find there is no such authorization given by the tenants. The move-out inspection report used by the landlord provides space for a tenant to authorize deductions in part Z. 2. and the tenant's signature is absent in the space provided. Nor, do I see the tenants gave written consent on any other portion of the move-out inspection report or any other documentation before me. Therefore, I find the landlord did not obtain the tenant's written consent to make deductions from or retain the tenant's deposits.

As for the landlord's letter of July 28, 2020, the landlord's demand for payment does not satisfy or replace a landlord's obligations under section 38(1). Therefore, this document does not demonstrate the landlord had the lawful right to retain the tenant's deposits.

Should the landlord be of the position the tenants owe her rent and utilities, the landlord remains at liberty to file her own Application for Dispute Resolution to seek a Monetary Order against the tenants; however, her right to make a claim against the tenant's deposit has been extinguished under section 38(6).

In light of all of the above, I find the landlord violated section 38(1) of the Act and I find the tenant entitled to return of double the security deposit and pet damage deposit as provided under section 38(6) of the Act, which is \$3200.00.

I further award the tenant recovery of the \$100.00 filing fee paid for this Application for Dispute Resolution.

In keeping with the above findings, I provide the tenant with a Monetary Order in the sum of \$3300.00 to serve and enforce upon the landlord.

Conclusion

The tenant is provided a Monetary Order in the sum of \$3300.00 for return of double the security deposit and pet damage deposit; and, recovery of the filing fee.

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: November 26, 2020

Residential Tenancy Branch