



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on September 14, 2020 seeking a monetary order for the return of the security deposit they paid at the start of a past tenancy. They also seek reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on January 4, 2021. In the conference call hearing I explained the process and offered the parties the opportunity to ask questions.

At the start of the hearing, each party confirmed their receipt of the evidence prepared by the other. On this basis, I proceeded with the hearing, with each party making submissions and presenting their evidence.

Issue(s) to be Decided

- Is the tenant entitled to an Order granting a refund of the security deposit pursuant to section 38 of the *Act*?
- Is the tenant entitled to reimbursement of the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all evidence and written submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The tenant provided a copy of the tenancy agreement. It shows that both parties signed the agreement on April 14, 2019 for the tenancy that commenced on June 1, 2019. The rent amount was set at \$2,600 per month, and the tenant paid a security deposit amount of \$1,300 on April 1, 2019.

The tenancy ended with the tenant's notice provided to the landlord "within the allowed time frame", as stated by the tenant in the hearing. This was for the final move-out date of August 31, 2020. The landlord did not object to the tenant's notice to end the tenancy.

Both parties described the cleaning details and the scheduling of a move-out inspection meeting at the very end of the tenancy. The tenant provided that they hired their own cleaners who assured them that their work was sufficient. The landlord gave their version of events that had them noticing deficiencies and then undertaking their own cleaning on that same day. This was done so to facilitate the new tenants' move in the following day.

The Condition Inspection Report bears the notation "does not agree". This is to show the tenant not agreeing to a \$460 deduction from the security deposit that the landlord proposed for, as stated in their documentation, "neglect in cleaning." Other damages and deficiencies are noted, and the landlord provided evidence in the form of photos to show this.

The tenant recounted how they felt frustrated at that time, and felt they were being "manipulated". Subsequent to their move-out, they received an \$840 money transfer on September 11. On their Application, they stated that "[they] did not accept this amount as they felt [they were] being manipulated." There was no agreement on an amount "despite attempts to do so."

There was discussion between the parties of a \$250 amount for damage to the floor. The tenant wanted specifics which were not available at that time; therefore, the amount was not settled and there was no final agreement on this.

Analysis

Section 38(1) of the *Act* provides that a landlord must either: repay a security or pet deposit; or apply for dispute resolution to make a claim against those deposits. This must occur within 15 days after the later of the end of tenancy or the tenant giving a forwarding address.

Section 38(4) provides that a landlord may retain a security deposit or pet deposit if the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. This subsection specifies this written agreement must occur at the end of a tenancy.

Section 38(6) sets out the consequences where the landlord does not comply with the requirements of section 38(1). These are: the landlord may not make a claim against the deposit; and, the landlord must pay double the amount of the deposit.

I find as fact the tenant gave their forwarding address to the landlord as provided for in their evidence. They provided this to the landlord via text message on September 8, 2020. The landlord acknowledged this in the hearing. A copy of this text message is in the evidence.

In the hearing, the landlord confirmed they did not apply for dispute resolution to claim against the security deposit within 15 days of receiving this forwarding address. The landlord provided that they tried to resolve this matter without formalizing a process through dispute resolution; however, they felt there was no response from the tenant, mainly as a lack of acknowledgement of the landlord's own efforts at cleaning at the very end of the tenancy.

I am satisfied the tenant's forwarding address was within the landlord's knowledge, as necessary, by September 8, 2020 after the end of the tenancy. By not returning the security deposit, and not applying for dispute resolution on a claim against that deposit, I find the landlord's actions constitute a breach of section 38 of the *Act*. The landlord must pay the tenant double the amount of the security deposit, as per section 38(6) of the *Act*.

To be clear, the actual state of the rental unit, or the amount of cleaning involved is not at issue. Rather, my decision rests solely on an application of the portions of the *Act* governing dispensation or retention of the security deposit.

The *Act* section 72 grants me the authority to order the repayment of a fee for the Application. As the tenant was successful in their claim, I find they are entitled to recover the filing fee from the landlord.

Conclusion

I order the landlord to pay the tenant the amount of \$2,700 which includes: \$2,600 for double the amount of the security deposit and the \$100.00 filing fee. I grant the tenant

a monetary order for this amount. This order must be served on the landlord. Should the landlord fail to comply with this monetary order it may be filed in the Provincial Court (Small Claims) 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: January 5, 2021

Residential Tenancy Branch