



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing originated as a direct request proceeding and was later scheduled for a participatory hearing. This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security and pet damaged deposits, pursuant to sections 38 and 67; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The tenant and landlord B.Z. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the landlords were served with the tenant's application for dispute resolution and Notice of Reconvened Hearing via registered mail. The tenant entered into evidence a Canada Post receipt stating same. I find that the landlords were served in accordance with section 89 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security and pet damaged deposits, pursuant to sections 38 and 67 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 1, 2018 and ended on May 30, 2020. Monthly rent in the amount of \$1,896.00 was payable on the first day of each month. A security deposit of \$925.00 and a pet damage deposit of \$925.00 were paid by the tenant to the landlords.

Both parties agree that they completed a joint move in condition inspection report on June 30, 2020 and a joint move out condition inspection report on May 29, 2020. The reports were signed by both parties and entered into evidence. Both parties agree that since they did not have a photocopier, identical move in and out reports were created during the move in and out inspections and each party took a copy. The reports state the same thing, except the move out report submitted by the tenant states that the landlord is permitted to retain "896\$ + 60\$ = ~~1014~~\$ 956. The move out report submitted by the landlord states that the landlord is permitted to retain "896\$ + 60\$ = ~~1014~~". Both parties agree that the math mistake was corrected on the tenant's copy but not the landlord's copy. Both parties agreed that the tenant authorized the landlords to retain \$956.00 from his security deposit.

Both parties agree that the tenant provided the landlords with his forwarding address on the move out condition inspection report.

Section Z. of the move out condition inspection report states:

No damage but rent of May based on covid impact not paid from 1896\$, 1000\$ BC help should be pay to landlord account due her action.

Landlord B.Z. testified that the email she received from the province about a \$1000.00 rent subsidy cited a name she did not know and so she did not accept the money and kept the tenant's deposits. Landlord B.Z. testified that she did not file an application for dispute resolution seeking authorization to retain any portion of the tenant's security or pet damage deposits.

The tenant testified that the name on the subsidy was his wife's and the subsidy was meant for the family and he provided the government with the proper information and the landlord chose not to accept it.

Both parties agree that the landlords have not returned any portion of the tenant's deposits to the tenant.

Analysis

Section 38 of the Act requires the landlords to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlords are required to 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 landlords have obtained the tenant's written authorization to retain all or a portion of the security deposit and or pet damage deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I find that the landlords did not (a) return the tenant's deposits, less the \$956.00 they were entitled to retain, or (b) file an application for dispute resolution seeking authorization to retain the remainder of the deposits, within 15 days of the tenant's provision of his forwarding address in writing. Therefore, pursuant to section 38 of the Act, the tenant is entitled to the return of double his deposits, pursuant to the following calculation:

\$1,850.00 (security and pet damage deposit paid to landlords) - \$956.00 (amount tenant authorized landlords to retain) = \$894.00 x 2 (doubling provision) = \$1,788.00.

The payment or nonpayment of a provincial covid rent supplement does not alter the landlords responsibility under the Act to comply with section 38 of the Act.

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$1,888.00.

The tenant is provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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: January 04, 2021

Residential Tenancy Branch