



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application by the tenant filed on September 11, 2020, under the Residential Tenancy Act (the “Act”) for a monetary order for return of double the security deposit (the “Deposit”), and to recover the filing fee for the claim.

This matter proceeded by way of the direct request proceeding. On September 22, 2020, the Adjudicator made an interim decision, which determined that more information was needed and found it was appropriate to adjourn this matter to a participatory hearing. The interim decision further required the tenant to serve the landlord with a copy of the interim decision and a copy of the adjourned Notice of Hearing.

The tenant testified that they complied with the interim decision and that the above documents were sent to the landlord by registered mail on September 28, 2020. Filed in evidence is a copy of the Canada post tracking number.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the landlord has been duly served in accordance.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary matter

In this case the Adjudicator adjourned this matter as there was a discrepancy in the landlord’s name on the tenancy agreement and the named respondent.

The tenant stated that they did not notice that the landlord used an incorporated name on the tenancy agreement of S.B. Inc. The tenant stated that S.B. is the owner of the premise and all other document list their personal name such as the application for tenancy and the form "K". Filed in evidence are copies of the documents.

Section 1 of the Act defines landlord

"landlord", in relation to a rental unit, includes any of the following:

- (a) **the owner of the rental unit**, the owner's agent, or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

In this case I am satisfied that S.B. is the owner of the rental unit and is the landlord under the Act. Therefore, I am satisfied the landlord was properly named. I am also satisfied that the landlord also used an incorporated name on the tenancy agreement, I find it not prejudicial to the landlord or the tenant to amend the style of cause to include the landlord's incorporated name as they are the same person.

Issue to be Decided

Is the tenant entitled to a monetary order for return of double the Deposit?

Background and Evidence

The tenancy began on June 2, 2018. Rent in the amount of \$2,100.00 was payable on the first of each month. A security deposit of \$1,050.00 was paid by the tenant.

The tenant testified that they vacated the premises on September 30, 2019 . The tenant stated that they provided the landlord with a written notice of the forwarding address at the time they completed the move-out condition inspection report, as it was written on the report. The tenants stated they did not authorize the landlord to retain any amount from the Deposit. Filed in evidence is a copy of the move-out condition inspection report.

The tenant testified that the landlord's agent told them later that the landlord was keeping the security deposit for painting the rental unit, because the touch up paint they used to cover the picture holes was slightly lighter. The tenant stated that they use the paint that left in the rental unit and that it was not their fault that there was a slight variation because the unit had not been painted for a long period of time. The tenant stated they are not responsible to paint the unit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must do one of the following:**

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I accept the undisputed testimony of the tenant that the landlord had the tenant's forwarding address on September 30, 2019. This is supported by the move-out condition inspection report.

I accept the undisputed testimony of the tenant that the landlord did not return the security deposit.

I accept the undisputed testimony of the tenant that they did not agree in writing that the landlord may retain any amount from the security deposit. While I accept on the bottom of the move-out condition inspection report the landlord's agent made a note about the paint marks; however, that was not written consent of the tenant.

I find the landlord has breached 38(1) of the Act.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlord did not have any authority under the Act to keep any portion of the Deposit. Therefore, I find that the landlord was not entitled to retain any portion of the Deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pay the tenant the sum of **\$2,200.00**, comprised of double the security deposit (\$1,050.00) on the original amount held and to recover the \$100.00 fee for filing this Application.

The tenant is given a formal monetary order pursuant to 67 of the Act, in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the order may be filed in the small

claims division of the Provincial Court and enforced as an order of that court. The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application for return of double the Deposit is granted. The tenant is granted a monetary order in the above noted amount.

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 15, 2021

Residential Tenancy Branch