



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Amber Properties Ltd.

and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A participatory hearing was held, via teleconference, on February 11, 2021. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- An order that the Landlord return all or part of the security deposit or pet damage deposit

The Tenant attended the hearing. However, the Landlord did not. The Tenant stated that she served the Notice of Hearing, evidence, and her application package to the Landlord by registered mail on October 28, 2020. Pursuant to section 89 and 90 of the Act, I find the Landlord is deemed to have received this package 5 days after it was mailed, on November 2, 2020.

The Tenant was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

Background and Evidence

The Tenant confirmed that she moved into the rental unit sometime around June 29, 2011. The Tenant stated that she moved out on September 1, 2020, but paid rent until the end of September, due to the fact she did not give proper 1-Month's Notice that she would be moving out. The Tenant stated that she did the move-out inspection on August 30, 2020, as she had another place to move into at the start of September 2020.

Monthly rent was set at \$980.44, and was due on the first of the month. The Tenant stated that she paid a security deposit of \$380.00 and a pet deposit of \$380.00 at the start of the tenancy. The Tenant stated that the Landlord never returned any of the deposits. The Tenant stated that she provided her forwarding address in writing on August 30, 2020, by filling out the bottom portion of the move-out condition inspection report, which she left with the Landlord.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

In this case, the Tenant moved out and vacated the unit on September 1, 2020, which I find reflects the end of the tenancy. I find the Landlord received the Tenant's forwarding address in writing on the day of the move-out condition inspection, August 30, 2020. This address was written on that report and given to the Landlord in person.

I note the Tenant did not authorize any deductions from the security deposit, and there is no evidence the Landlord had any legal basis to withhold the deposit, unilaterally.

Pursuant to section 38(1) of the Act, the Landlord had 15 days from the end of the tenancy, or receipt of the forwarding address in writing, whichever is later. In this case, the Tenant stated that it has been several months now and nothing has been returned. I note there is no evidence the Landlord filed an application against the deposit, nor did they return either of the deposits. As such, I find the Landlord breached section 38(1) of the Act.

Accordingly, as per section 38(6)(b) of the Act, I find the Tenant is entitled to recover double the amount of the security and pet deposit combined (\$760.00 x 2). Further, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenant paid to make the application for dispute resolution.

In summary, I issued the Tenant a monetary order for \$1,620.00 based on the Landlord's failure to deal with the security deposit in accordance with section 38 of the Act.

Conclusion

I grant the Tenant a monetary order in the amount of **\$1,620.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: February 11, 2021

Residential Tenancy Branch