



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on September 28, 2020 seeking an Order granting a refund of the security deposit, as well as a recovery of the filing fee for the hearing process.

This participatory hearing was convened after an agent of this office determined the correct document regarding the tenant’s forwarding address was not in place to proceed by a direct request proceeding. The agent informed the tenant of this in the decision dated October 26, 2020. This generated a Notice of Hearing sent to the Applicant tenant and the Respondent landlords.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the *Act*) on February 9, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The tenant confirmed they served the landlord notice of this hearing via registered mail on November 26, 2020. Via the registered mail tracking information, they confirmed the notice and their prepared evidence was delivered to the landlord. On the basis of the tenant’s oral testimony, I am satisfied they undertook service to the landlord using a prescribed method set out in section 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to an Order granting a refund of the security deposit pursuant to section 38(1)(c) of the *Act*?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The tenant provided a copy of the tenancy agreement for this hearing, and spoke to its terms, confirming the details. Both parties signed the agreement on September 10, 2017. Over succeeding years, the rent amount increased to \$2,061. The agreement submitted by the tenant here shows they paid a security deposit amount on November 12, 2016; this amount was \$942.50.

The tenancy ended on August 31, 2020. This was on this tenant's own initiative. They provided the landlord a copy of their notice to end tenancy via registered mail, and for good measure attached a photo of this document to the landlord via email.

The tenant provided that the last day of the tenancy was August 31, 2020. On this date, they met the landlord for a walk-through inspection. The landlord brought no document with him for completion.

The testimony of the tenant in the hearing is that they provided a written note to the landlord at that meeting. This note contained their forwarding address letter.

By September 14, 2020 the tenant queried the landlord on the return of their security deposit. The landlord's reply to this was that they would send a cheque.

On September 21, the tenant received a \$500 amount cheque in the mail. A note from the landlord shows they deducted \$138 and \$304 from the amount of the security deposit. The landlord indicated these amounts were for the cost of replacement blinds, and holes in the shower wall. This note from the landlord provided for other repairs or cleaning.

The tenant claims \$442.50. For this remaining amount not returned by the landlord. The landlord did not attend the hearing to speak to the tenant's claim. They did not submit written submissions in advance of the scheduled hearing.

Analysis

The *Act* section 38(1) states that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must repay any security or pet damage deposit to the tenant or make an Application for Dispute Resolution for a claim against any deposit.

Further, section 38(6) of the *Act* provides that if a landlord does not comply with subsection (1), a landlord must pay the tenant double the amount of the security and pet damage deposit.

From the evidence I can establish as fact that the landlord retained \$442.50 of the tenant's security deposit amounts. Their reason for doing so was explained to the tenant in their

handwritten letter to the tenant dated September 14, 2020. After this, they returned \$500 to the tenant via e-cheque.

I find as fact that the tenant moved out of the unit on August 31, 2020. The tenant provided their forwarding address to the landlord at that time.

I find the evidence shows the tenancy ended on August 31, 2020, and the landlord did not subsequently make a claim to retain the portion of the deposits within the legislated timeframe of 15 days. It is clear from the evidence that the landlord retained a portion of the total deposit amount for repairs. This occurred after the tenant moved out. When the tenancy ended, the landlord had the opportunity to register a claim to retain that portion; however, there is no record that they did so.

I find the landlord did not return the deposits to the tenant as the *Act* requires. This constitutes a breach of section 38(1); therefore, section 38(6) applies and the landlord must be double the amount of the security and pet damage deposits.

The landlord previously paid \$500 to the tenant. I reduce this amount from the doubled-deposit amount, for a final total of \$1,385 payable by the landlord to the tenant. Because the tenant was successful in their claim on this Application, I order reimbursement of the Application filing fee, \$100.

Conclusion

I order the landlord to pay the tenant the amount of \$1,485. I grant the tenant a monetary order for this amount. This monetary order 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: February 9, 2021

Residential Tenancy Branch