



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFT MNSD

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the Act") for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The spelling of the landlord's name was confirmed in the hearing. As neither party was opposed, the landlord's name was amended to reflect the proper spelling of the landlord's name.

The landlord confirmed receipt of the tenants' dispute resolution application ('Application') and evidence package. In accordance with section 89 of the Act, I find that the landlord was duly served with the tenants' Application and evidence package. Although the tenants testified that they were not served with the landlord's evidentiary materials, they confirmed that they did not have an issue with the admittance of this evidence for the purpose of this hearing. Accordingly, the landlord's materials were considered for this window.

Issue(s) to be Decided

Are the tenants entitled to the return of all or a portion of their security deposit?

Are the tenants entitled to recover the cost of the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

Both parties entered into a fixed-term agreement that started on May 31, 2019, and ended on May 30, 2020. Monthly rent was set at \$2,000.00, payable on the first of the month. The landlord collected a security deposit and pet damage deposit in the amounts of \$1,000.00 each deposit. Both parties confirmed that the tenants provided their forwarding address on October 16, 2020.

The tenants testified that the landlord had only returned \$1,211.71 to the tenants on June 21, 2020 by way of electronic transfer. The tenants testified that the landlord did not file an application, nor did the tenants give permission to the landlord to retain any portion of their deposits.

The landlord testified that they had retained a portion of the deposits as the tenants failed to attend a move-out inspection, and they did not leave the home in reasonably clean and undamaged condition.

Analysis

Sections 35 and 36 of the *Act* set out the requirements for a move-out inspection. Section 35(2) of the *Act* requires that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

Residential Tenancy Regulation further clarifies the requirements for how two opportunities for an inspection must be offered to the tenants:

Two opportunities for inspection

17 (1) *A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.*

(2) *If the tenant is not available at a time offered under subsection (1),*

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

As stated above, the landlord's final opportunity to attend an inspection must be proposed to the tenants in the approved form. The landlord failed to provide the tenants with the proposed time and date in the approved form, specifically RTB Form *RTB-22 Notice of Final Opportunity to Schedule a Condition Inspection*. I am not satisfied that the landlord has met the requirements of the *Regulation* and *Act*.

Section 36 (2) of the *Act* states that "unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) [2 opportunities for inspection]."

The consequence of not abiding by these sections of the *Act* is that "the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished", as noted in section 36(2) of the *Act*. In this case I find that the landlord failed to abide by the *Act* and *Regulation*, and therefore the landlord's right to claim against the security and pet damage deposit is extinguished.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the

tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "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."

In this case, I find it undisputed that the landlord had only returned a portion of the tenants' security and pet damage deposit to them. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenants' deposits. The tenants gave sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain any portion of their deposits. In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order in an amount equivalent to the original security and pet damage deposits plus the return of the remaining portion of their deposits.

As the tenants were successful in their claim, I find the tenants are entitled to recover the cost of the filing fee for this application.

Conclusion

I issue a Monetary Order in the tenants' favour under the following terms which allows the tenants to recover the remaining portion of their security and pet damage deposit, plus a monetary award equivalent to the value of their deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*. I find the tenants are also entitled to \$100.00 for recovery of the filing fee for this application.

Item	Amount
Return of Remaining Security and Pet Damage Deposit	\$788.29
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	2,000.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$2,888.29

The tenant(s) are provided with this Order 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, 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: February 23, 2021

Residential Tenancy Branch