



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lady Sharon Apartments and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

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 deposit, pursuant to sections 38 and 67.

The tenant, landlord R.B. and the landlord's agent 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 via registered mail. I find that the tenant's application was served on the landlords in accordance with section 89 of the *Act*.

Issues to be Decided

Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 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 May 1, 2020 and ended on October 27, 2020. This was a one-year fixed term tenancy agreement. Monthly rent in the amount of \$1,200.00 was payable on the first day of each month. A security deposit of \$600.00 was paid by the tenant to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the tenant slipped her written notice to end tenancy under landlord R.B.'s door on September 26, 2020. Landlord R.B. confirmed receipt on September 26, 2020. The above letter was entered into evidence and states in part:

- "I am giving notice to end tenancy on Oct. 27th, day I am moving."
- "I understand I am breaking my lease."
- "If suite gets rented out for November 1st by your company, you may forward my damage deposit cheque to: [forwarding address provided]."

Both parties agree that the landlords did not return the security deposit to the tenant. The tenant testified that she is seeking double the deposit. The landlords testified that the tenant broke her lease causing them loss of rental income and so the security deposit was not returned to the tenant. Landlord K.B. and his agent testified that they have not filed an application for dispute resolution seeking permission to retain the tenant's security deposit. The tenant testified that she did not authorize the landlords to retain her security deposit.

The tenant testified that the landlords did not ask her in writing to complete a move in or move out condition inspection report and that no reports were completed. Landlord K.B. testified that a move in condition inspection report was filled in but the tenant never signed it. The move in condition inspection report was not entered into evidence. The agent testified that the tenant should have contacted the landlord to complete the move out condition inspection and report. Landlord K.B. and his agent did not dispute the tenant's testimony that the tenant was not asked in writing to complete a move in or out condition inspection report.

Analysis

Section 38 of the Act requires the landlord 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 landlord is 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 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)).

I find that the landlords were sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act*, with the tenant's forwarding address on September 26, 2020 as landlord R.B. confirmed receipt on that date.

Based on the testimony of both parties, I find that the landlords did not return the tenant's security deposit or file an application with the Residential Tenancy Branch for authorization to retain the deposit, within 15 days of the end of this tenancy, or at all.

I find that the landlords did not have the tenant's authorization in writing to retain the security deposit. I find that the following written statement made by the tenant in her notice to end tenancy:

"If suite gets rented out for November 1st by your company, you may forward my damage deposit cheque to: [forwarding address provided]"

does not constitute authorization to retain the security deposit. While the above statement implies that the tenant may not receive all her deposit back, it is not direct authorization as required under section 38 of the *Act*. I therefore find that the tenant is entitled to the return of double her security deposit in the amount of \$1,200.00, pursuant to s.38(6)(b) of the *Act*.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$1,200.00.

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: March 18, 2021

Residential Tenancy Branch