



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

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

- authorization to obtain a return of double the value 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.

As the landlord confirmed that they received a copy of the tenant's dispute resolution hearing package and evidence package sent by registered mail, I find that the landlord was duly served with this package in accordance with sections 88 and 89 of the *Act*. Since the tenant confirmed that they had received copies of the landlord's written evidence, I find that the landlord's written evidence was served in accordance with section 88 of the *Act*.

On December 31, 2021, an adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) issued an Interim Decision regarding the tenant's application for the above-noted outcomes using the Residential Tenancy Branch's (the RTB's) direct request process. As the Adjudicator was not satisfied that all of the information required for consideration of the tenant's application by way of the ex parte hearing provided pursuant to the RTB's direct request procedure had been submitted, the Adjudicator adjourned the tenant's application to a participatory hearing by an arbitrator. I have subsequently been delegated responsibility pursuant to the *Act* to convene the participatory hearing to consider the tenant's application.

Issues(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

On September 27 and 28, 2018, the parties signed a one-year fixed term Residential Tenancy Agreement (the Agreement) for a tenancy that was to run from October 1, 2018 until September 30, 2019. On the expiration of the first term of this tenancy, the parties entered into a second one-year fixed term, which expired by October 1, 2020. At that point, the tenancy continued as a month-to-month tenancy until the tenant surrendered vacant possession of the rental unit to the landlord on October 31, 2020. Monthly rent was set at \$3,300.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$1,650.00 security deposit.

The parties agreed that the tenant, the landlord and the landlord's realtor conducted a joint move-in condition inspection on October 7, 2018. Although a report of that inspection was prepared, apparently by the landlord's realtor, the parties disagreed as to whether a copy of the joint move-in condition inspection was provided to the tenant at that inspection or shortly thereafter. The landlord maintained that a copy of that inspection report was provided to the tenant; the tenant testified that they never received a copy of the landlord's inspection reports until it was provided to them as written evidence for this hearing.

The parties agreed that they conducted a joint move-out condition inspection on October 31, 2020, at which time the tenant surrendered their keys to the rental unit. They also agreed that the tenant provided the landlord with their forwarding address in writing at that time. The landlord attended that inspection with a witness who has signed an affidavit with respect to that inspection. The tenant attended the hearing with a witness, as well.

The affidavit from the landlord's witness stated that the landlord informed the tenant "to complete the condition inspection report and insisted on it but (the tenant) refused to comply, complete and sign the report." This written evidence coincided with the tenant's sworn testimony that upon completion of the inspection with the landlord, the landlord asked the tenant to complete and sign a report of their joint move-out condition

inspection. The tenant said that they refused to fill out this report and were never provided with any copy of the condition inspection report entered into written evidence by the landlord until the landlord sent this to them in January 2021, in response to the tenant's application for dispute resolution. At the hearing, the landlord confirmed that they did not send the tenant a copy of the joint condition inspection report until after the tenant applied for dispute resolution.

The landlord entered into written evidence copies of emails and other documents associated with the landlord's assertion that the rental unit suffered damage during the course of this tenancy, for which the landlord believes the tenant should be held responsible. At the hearing, the landlord noted that they sent the tenant an email on November 10, 2020, with respect to their concern that the damage caused during the tenancy exceeded the value of the security deposit. When they did not hear back from the tenant, they retained the security deposit. The landlord confirmed that they had neither applied for dispute resolution to keep any portion of the security deposit, had not received the tenant's written permission to keep any portion of that deposit, nor had they returned any portion of the tenant's security deposit to them within 15 days of receiving the tenant's forwarding address in writing. The landlord also confirmed that they have not applied for a monetary award for damage arising out of this tenancy.

Analysis

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 23 of the *Act* reads in part as follows:

- 23** (1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*
- (3) *The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*
- (4) *The landlord must complete a condition inspection report in accordance with the regulations.*

Section 24(2) of the *Act* reads in part as follows:

Consequences for tenant and landlord if report requirements not met

24 *(2) The right of a 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 23 (3) [2 opportunities for inspection],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...

Sections 35 and 36 of the Act establish similar provisions regarding a joint move-out condition inspection and the report to be produced by the landlord regarding that inspection.

35 *(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

- 36** (1) *The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if*
- (a) the landlord complied with section 35 (2) [2 opportunities for inspection], and*
 - (b) the tenant has not participated on either occasion.*
- (2) *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],*
 - (b) having complied with section 35 (2), does not participate on either occasion, or*
 - (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

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 security deposit in full 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*). This effectively allows a tenant to obtain a monetary award that doubles the value of their security deposit. 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. In this case, the landlord had 15 days after October 31, 2020 to take one of the actions outlined above.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security 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." As there is no evidence that the tenant has given the landlord written authorization at the end of this tenancy to retain any portion of this security deposit, section 38(4)(a) of the *Act* does not apply to the tenant's security deposit.

In this case, I find the landlord's right to even file an application to keep the security deposit has been extinguished due to the landlord's failure to provide the tenant with a copy of the move-out condition inspection report shortly after this tenancy ended. It is also possible that the landlord's rights to retain the security deposit also ended shortly after the joint move-in condition inspection, if the tenant's sworn testimony that they did not receive the report of that initial inspection until the landlord provided it as part of the landlord's written evidence package for this hearing is to be believed.

I should also note that the above-noted sections of the *Act* place the responsibility of preparing these reports on the landlord and not the tenant. Based on the evidence before me, it appears that the landlord had an incorrect understanding of who bore responsibility for preparing these reports.

Within 15 days of receiving the tenant's forwarding address in writing, the landlord did not return the security deposit in full to the tenant, did not apply for dispute resolution to obtain authorization to retain any portion of that deposit, and did not obtain the tenant's written authorization to retain any portion of that deposit.

Under these circumstances, I allow the tenant's application for a monetary award of \$3,300.00, double the value of their initial security deposit for the landlord's failure to abide by the provisions of section 38(6) of the *Act*.

Since the tenant has been successful in this application, I allow them to recover their filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$3,400.00, which enables the tenant a monetary award of \$3,300.00 for the return of double the value of their security deposit and \$100.00 for the recovery of their filing fee.

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 23, 2021

Residential Tenancy Branch