



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR

Introduction

On December 11, 2020, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of the security deposit and pet damage deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “Act”).

The Tenant attended the hearing; however, the Landlord did not attend at any point during the 27-minute hearing. All parties in attendance provided a solemn affirmation.

At the outset of the hearing, I advised the Tenant that recording of the hearing was prohibited and he was reminded to refrain from doing so.

The Tenant advised that he served the Notice of Hearing and evidence package to the Landlord by registered mail on January 15, 2021 (the registered mail tracking number is noted on the first page of this Decision). The registered mail tracking history indicated that this package was refused by the recipient on January 18, 2021 and the package was returned to sender.

This Notice of Hearing package was provided to the Tenant on January 14, 2021. Based on the solemnly affirmed testimony and undisputed evidence before me, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a return of double the security deposit?
- Is the Tenant entitled to a return of double the pet damage deposit?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the tenancy started on August 1, 2019 and that the tenancy ended when he gave up vacant possession of the rental unit on November 11, 2020 after being served a 10 Day Notice to End Tenancy for Unpaid Rent. Rent was established at \$750.00 per month and was due on the first day of each month. A security deposit of \$375.00 and a pet damage deposit of \$375.00 were also paid. A signed copy of the tenancy agreement was not submitted as documentary evidence.

He stated that he provided his forwarding address in writing to the Landlord on November 12, 2020 when he provided her with a copy of the move-out inspection report. He stated that she took this document and left. He submitted a copy of this report as documentary evidence.

He testified that the Landlord attempted to electronically transfer him \$175.00 on December 8, 2020 but he refused this amount. He then emailed her a letter that same day requesting that his deposits be returned, and he provided his forwarding address again. He stated that he did not receive a response to this email. A copy of this email was submitted as documentary evidence.

He advised that he received a cheque, that was sent to him by mail from the owner of the rental unit, in the amount of \$220.00. He received this on January 6, 2021. He stated that he did not give the Landlord or owner any written authorization to keep any portion of his deposits.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the 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 deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the undisputed evidence before me, the Tenant provided a forwarding address in writing to the Landlord on November 12, 2020. Furthermore, the owner of the rental unit mailed the Tenant a cheque prior to January 6, 2021 for a partial return of the Tenant's deposits. As such, I am satisfied that the Landlord was more likely than not in possession of the Tenant's forwarding address in writing on November 12, 2020 and should have dealt with the deposits in accordance with the *Act*.

I find it important to note that Section 38 of the *Act* clearly outlines that from the later point of a forwarding address in writing being provided or from when the tenancy ends, the Landlord must either return the deposits in full **or** make an application to claim against the deposits. There is no provision in the *Act* which allows the Landlord to retain a portion of the deposits without the Tenant's written consent.

The undisputed evidence before me is that the Landlord did not return the security deposit or pet damage deposit in full or make an Application to keep a portion of the deposits within 15 days of November 12, 2020. As the consistent evidence is that the Landlord illegally withheld a portion of the deposits contrary to the *Act*, and did not comply with the requirements of Section 38, I find that the doubling provisions of this Section do apply in this instance.

As per Policy Guideline # 17, as the Tenant paid a security deposit of \$375.00 and a pet damage deposit of \$375.00, and as the Landlord held back \$530.00 without the Tenant's written authorization, the monetary award granted shall be calculated as follows: $\$750.00 \times 2 = \$1,500.00 - \$220.00 = \$1,280.00$. Under these provisions, I grant the Tenant a monetary award in the amount of **\$1,280.00**.

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$1,280.00** in the above terms, and the Landlord must be served with **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: April 13, 2021

Residential Tenancy Branch