



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR, FFT

Introduction

The tenants (hereinafter the “tenant”) filed an Application for Dispute Resolution on February 4, 2021 seeking a monetary order for the return of the security deposit they paid at the start of a past tenancy. They also seek reimbursement of the Application filing fee.

This participatory hearing was convened after the issuance of a March 1, 2021 Interim Decision of an Adjudicator. That Adjudicator determined that the tenant’s Application could not be considered by way of the Residential Tenancy Branch’s direct request proceedings, as originally requested. The Adjudicator reconvened the tenant’s Application to a participatory hearing as they were not satisfied with the completion of the tenancy agreement.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on July 9, 2021. In the conference call hearing I explained the process and offered the parties the opportunity to ask questions.

At the start of the hearing, each party confirmed their receipt of the evidence prepared by the other. On this basis, I proceeded with the hearing, with each party making submissions and presenting their evidence.

Issue(s) to be Decided

- Is the tenant entitled to an Order granting a refund of the security deposit pursuant to s. 38 of the *Act*?

- Is the tenant entitled to reimbursement of the filing fee for this application pursuant to s. 72 of the *Act*?

Background and Evidence

I have reviewed all evidence and written submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord provided copies of two tenancy agreements:

- One agreement consists of three pages, and bears the tenant's signature of November 2, 2020, and the landlord's signature of October 30. This sets the rent amount at \$1,150, and a security deposit amount of \$700. This agreement on the second page states: "The tenant agrees to allow the landlord to keep an amount as payment for unpaid rent or damage . . ."
- The other agreement consists of six pages and is the template agreement from the Residential Tenancy Branch. This also bears each party's signature and sets the rent amount at \$1,150 with the tenancy starting on October 30, 2020. This sets out that the security deposit amount was \$500, and the pet damage deposit amount was \$200.

The landlord explained how they took over this tenancy with their purchase of the property. The tenant explained that when this landlord moved in to replace the previous landlord, the tenant gave their notice that they wished to end the tenancy. They gave the landlord here notice on November 30, for the tenancy end date of December 31, 2020.

Prior to the landlord here moving in and taking over as landlord, the tenant went through the rental unit with the previous landlord and reached an agreement concerning the condition of the rental unit. The previous landlord left on October 27, with existing damages "carrying over", and the previous landlord returning the deposits in full to the tenant. The tenant then paid the \$700 total amount to the landlord here. There was a meeting with the landlord here and the tenant on October 30.

When the tenant moved out from the unit at the end of December, there was a final meeting with the tenant and landlord on December 31. In the hearing the landlord set out that the tenant here explained that they knew there was extant damage in the unit. The landlord told the tenant at that time that they would fix the damages and take the

amount for that from the deposit. This was in the situation at that time of the tenant here moving out “quicker than expected.”

In the hearing the landlord provided that one of the tenants was present at the move-out meeting; however, they departed before providing a forwarding address. This was the reason the landlord did not provide a copy of the Condition Inspection Report to the tenant. The landlord gave a piece of evidence showing the tenant provided a forwarding address later that evening, via text message. The evidence shows the landlord responded to this message the following day with: “Thank[s]!” and “I [will] get everything in the mail to you.”

After the tenancy ended and the tenant moved out, the landlord forwarded a cheque in the amount of \$415.15 to the tenant. The tenant provided proof of this in the form of an image of the actual cheque dated January 5, 2021. The landlord provided a copy of their message to the tenant showing \$284.85 deductions from the deposit for:

- new weather strip: \$15.87
- new door: \$75.96
- door installation: \$30
- waster removal: \$12
- cleaning 3.5 hours: \$140

In the hearing, the landlord provided that they did not file an Application with the Residential Tenancy Branch to claim a portion of the security deposit and/or pet damage deposit.

Analysis

The *Act* s. 5 provides that: “Landlords and tenants may not avoid or contract out of this Act or the regulations.” Further: “Any attempt to avoid or contract out of this Act or the regulations is of no effect.”

The 3-page tenancy agreement provided by the landlord – also appearing in the tenant’s own evidence – contains the clause allowing for the landlord’s retention of “an amount as payment for . . . damage”. I apply s. 5 as stated above to find that this clause is of no effect. As such, there is no automatic deduction from either the security deposit or the pet damage deposit.

The *Act* s. 38(1) provides that a landlord must either: repay a security or pet deposit; or apply for dispute resolution to make a claim against those deposits. This must occur

within 15 days after the later of the end of tenancy or the tenant giving a forwarding address.

Following this, s. 38(4) provides that a landlord may retain an amount from a security deposit or pet damage deposit if the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. This subsection specifies this *written* agreement must occur at the end of a tenancy.

Following this, s. 38(6) sets out the consequences where the landlord does not comply with the requirements of section 38(1). These are: the landlord may not make a claim against the deposit; and, the landlord must pay double the amount of the deposit.

I find the total deposit amount here was \$700. The parties were not explicit on a distinction between the two types of deposits, and for all purposes herein the parties treated this as a single deposit amount. From this total amount, the landlord returned \$415.15. This is shown clearly in the tenant's own evidence with the image of the cheque showing this.

I find as fact the tenant gave their forwarding address to the landlord as provided for in their evidence. This was via text message on December 31, 2020. I find this equates to the tenant providing that address *in writing*: the landlord acknowledged this by thanking the tenant for this; then, the landlord returned a portion of the deposit to the tenant.

I find the landlord did not apply for dispute resolution to claim against the deposits within 15 days of receiving this forwarding address. While the landlord provided that they had a verbal agreement in place with the tenant to keep a portion of the deposits, I find that is not documented to verify an agreement existed.

I am satisfied the tenant's forwarding address was within the landlord's knowledge, as necessary, by December 31, 2020, at the end of the tenancy. By not returning the deposits, and not applying for dispute resolution on a claim against the deposits, I find the landlord's actions constitute a breach of s. 38 of the *Act*. The landlord must pay the tenant double the amount of the deposits, as per s. 38(6) of the *Act*. This is \$1,400.

To be clear, the actual state of the rental unit, or the amount of cleaning involved is not at issue. Rather, my decision rests solely on an application of the portions of the *Act* governing dispensation or retention of the security deposit.

Because the landlord returned a portion of the deposits, I deduct this amount returned from the doubled amount. I so order the landlord to return the amount of \$984.85 to the tenant.

The *Act* s. 72 grants me the authority to order the repayment of a fee for the Application. As the tenant was successful in their claim, I find they are entitled to recover the filing fee from the landlord.

Conclusion

I order the landlord to pay the tenant the amount of \$1,084.85 which includes: \$984.85 for double the amount of the deposits minus the amount already refunded, and the \$100.00 filing fee. I grant the tenant a monetary order for this amount. They must serve this order on the landlord. Should the landlord fail to comply with this monetary order, the tenant may file it in the Provincial Court (Small Claims) where it will be 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 s. 9.1(1) of the *Act*.

Dated: July 12, 2021

Residential Tenancy Branch