



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("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 its application from the landlord, pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. 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 to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of his 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, Evidence

The tenant's testimony is as follows. The tenancy began on April 1, 2019 and ended on February 28, 2021. The tenants were obligated to pay \$1800.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$900.00 security deposit and a \$200.00 fob deposit, the landlord still holds both. The tenant testified that a written condition inspection report was conducted at move in and move out. The tenant testified that the move out condition inspection report was altered after he had signed it listing numerous deficiencies that he didn't agree to. The tenant testified that he provided his forwarding address on February 27, 2021 in person in writing to the landlord as part of the move out report. The tenant testified that he is willing to take responsibility for the cleaning cost the landlord incurred. The tenant testified that he is agreeable that \$295.93 be deducted from his deposit.

The landlords gave the following testimony. HF testified that the unit was not left in a condition that was re-rentable. HF testified that she believed that she and the tenant were engaged in settlement negotiations when she was served notice of this hearing. NH testified that the package wasn't stapled, or pages numbered. The landlords submit that they feel justified in retaining the deposit due to the damage in the unit.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant said he is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the testimony of the tenant, the documentary evidence before me and HF confirming that she had not returned the deposit or filed an application within fifteen days of the later; receiving the tenants forwarding address or the end of tenancy, I find that the landlord has not acted in accordance with Section 38 of the Act and that the tenant is entitled to the return of double his security deposit in the amount of \$900.00 x 2 = \$1800.00 + the return of the \$200.00 fob deposit for a total of \$2000.00. The tenant is also entitled to the recovery of the \$100.00 filing fee for a total award of \$2100.00.

The tenant indicated that he takes responsibility for leaving the unit dirty at move out and asks that the cleaning charge of \$295.93 be taken off the total he's entitled to leaving a balance owing to the tenant of \$1804.07.

Conclusion

The tenant has established a claim for \$1804.07. I grant the tenant an order under section 67 for the balance due of \$1804.07. This order may be filed in the Small Claims 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: August 19, 2021

Residential Tenancy Branch