



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* (the "**Act**") for:

- monetary order for \$1,400 representing two times the amount of the security deposit, pursuant to sections 38 and 62 of the Act; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing. The tenant was assisted by her daughter ("**MD**"). The landlord had an assistant ("**DL**") attend the hearing in case there were language barriers. DL was unable to stay for the duration of the hearing (he left approximately 2/3 through the hearing), but there were no language or communication issues presented at the hearing, and all parties were able to understand my questions and provide responsive answers.

MD testified that the tenant served the landlord with the notice of dispute resolution form and supporting evidence packages by registered mail and by leaving it in his mailbox. The landlord was unable to confirm the mode of delivery but confirmed that he received the tenants' documents once I listed the ones that the tenants had provided the RTB. I am satisfied that he was served with these documents and deem them served in accordance with the Act. The landlord testified, and the tenant confirmed, that the landlord served the tenant with their evidence package. I find that the tenants have been served in accordance with the Act.

Issues to be Decided

Is the tenant entitled to:

- 1) a monetary order of \$1,400, representing the return of double the security deposit; and
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting November 15, 2019 and ending November 14, 2020. After this date, the tenancy converted to month-to-month. Monthly rent was \$1,400 payable on the 15th of each month, not including utilities. The tenant paid the landlord a security deposit of \$700 at the start of the tenancy. A move in condition inspection report was completed and provided to the tenant at the start of the tenancy, a move out condition inspection report was completed and provided to the tenant at the end of the tenancy.

The rental unit is a basement unit in a single detached home. The upper unit is rented to another tenant (the “**upper tenant**”) by the landlord. The utilities are in the name of the upper tenant. The tenant pays them her portion of the utilities bill directly. She does not pay the landlord for utilities. The tenant and the upper tenant split the internet bill 50/50. The tenant was responsible for 33% of all other utilities’ bills.

The parties agree that the tenancy ended on February 15, 2021, when the tenant vacated the rental unit. The tenant provided the landlord with his forwarding address, in writing, on February 28, 2021.

The parties agree that, On February 17, 2021 the tenant attended the landlord’s house to obtain the return of the security deposit. They agree that the parties entered into a verbal agreement whereby the landlord could deduct \$100 from the security deposit in compensation for unpaid utilities. The landlord provided the tenant with a cheque for \$600 at this meeting.

The landlord testified that after this meeting he contacted the utilities company who advised him that the amount of utilities due for the rental unit could not be calculated at that time. He testified that in early March 2021 he learned that the tenant’s share of the utilities was significantly more than \$100 (\$232). He paid this amount to the upper tenant via cheque (copies of which he submitted into evidence).

The landlord testified that he cancelled the cheque for \$600 when he learned that the outstanding utilities were in excess of \$100. After he learned of the actual amount of unpaid utilities, he went to the tenant’s new rental unit and put a \$500 cheque in the mailbox. The tenant voided this cheque.

MD testified that the landlord caused a scene at the tenant’s new residence, and their current landlord barred him from the property.

The landlord has not made an application to the RTB for a monetary order for unpaid utilities.

Analysis

Analysis

Section 38(1) of the Act states:

Return of security deposit and pet damage deposit

38 (1) 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.

Based on the testimony of the parties, I find that the tenancy ended on February 15, 2021 and that the tenant provided her forwarding address in writing to the landlord on February 28, 2021.

I find that the landlord has not returned the security deposit to the tenants within 15 days of receiving their forwarding address. I do not consider the \$600 cheque to have been a return, as he cancelled it, preventing it from being cashed. The \$500 cheque (which I accept has been voided by the tenant) was returned outside the 15-day window.

I find that the landlord has not made an application for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding address from the tenants.

It is not enough for the landlord to allege that the tenant has failed to pay her portion of utilities. He must actually apply for dispute resolution, claiming against the security deposit, within 15 days from receiving the tenants' forwarding address. The Act does not allow a landlord to unilaterally deduct any amount from a security deposit absent explicit, written consent from a tenant, per section 38(4)(a), which states:

- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
 - (a) 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

No such written consent was obtained by the landlord. It is undisputed, however, that the tenant verbally consented to the landlord deducting \$100 from the deposit. In light of

the fact that the landlord cancelled the \$600 cheque, I find that the landlord intended to void this agreement, and not be bound by its terms. As such, and as the agreement was never put in writing, as the Act requires, I do not find that the landlord is entitled to withhold any amount of the security deposit.

As such, I find that the landlord has failed to comply with his obligations under section 38(1) of the Act.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

- (6) 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.

The language of section 38(6)(b) is mandatory. As the landlord has failed to comply with section 38(1), I must order that they pay the tenants double the amount of the security deposit (\$1,400).

As the tenants have been successful in their application, they are entitled to have their filing fee of \$100.00 repaid by the landlord.

Nothing in this application prevents the landlord from making a further application to the Residential Tenancy Branch, seeking to recover unpaid utilities that the tenant might owe. I explicitly make no finding of fact as to whether utilities were owed, or in what amounts.

Pursuant to section 72(1) of the Act, as the tenant has been successful in the application, she may recover their filing fee from the landlord.

Conclusion

Pursuant to sections 62 and 72 of the Act, I order that the landlord pay the tenant \$1,500, representing the return of double the security deposit and the filing fee.

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 24, 2021