Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR, FFT

Introduction

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

- monetary order for $2,965 representing two times the amount of the security deposit and pet damage deposit, pursuant to sections 38 and 62 of the Act;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

This matter was reconvened from an *ex parte,* direct request proceeding by way of an interim decision issued August 9, 2021.

The tenants attended the hearing. The landlord was represented at the hearing by its property manager ("**BB**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified, and BB confirmed, that the tenants served the landlord with the interim decision, the notice of reconvened hearing, and supporting documentary evidence. The landlord did not submit any evidence in support of its response to the tenants' application.

Issues to be Decided

Are the tenants entitled to:

1) a monetary order of $2,965;
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 tenant entered into a tenancy agreement with the prior property management company on ("**C21**", full name on cover of this decision) on September 1, 2018. Monthly rent was $1,450. The tenants paid C21 a security deposit of $725 and a pet damage

deposit of $725 (collectively, the "**deposits**"), which the landlord continues to hold in trust for the tenants.

In May 2021, C21 ceased being the property management company for the rental unit and the landlord took over. However, the landlord was operating under an old name ("**CR Ltd**"). The landlord, then named CR Ltd, entered into a written tenancy agreement with tenants on the same terms as the tenancy agreement with C21. C21 transferred the deposits to the landlord. Shorty after entering into this tenancy agreement, the landlord changed its name from CR Ltd to its current name.

The tenants and an agent of C21 conducted a move-in condition inspection on August 29, 2018. A copy of the move-in report was submitted into evidence. The tenancy ended on May 31, 2021. On May 31, 2021, an agent of the landlord and the tenants conducted a move-out condition inspection of the rental unit. The tenants provided their forwarding address on the move-out report, which was entered into evidence. The tenants testified that they agreed the landlord could retain $35 of the deposits for cleaning.

The tenants testified that the landlord did not return the deposits to them until July 23, 2021, and only after they attended the landlord's offices to serve the landlord with a copy of the notice of direct request (the instigating document for this application).

The landlord does not deny this. BB testified that he made an honest mistake in not return the deposits to the tenants. He testified that two rental units in the residential property vacated at the end of May 2021, and that he must have accidently neglected to send the deposit cheque to the tenant as a result.

The landlord testified that as soon as the tenants came to his office on July 23, 2021, he looked into the situation, admitted his mistake, and drafted a cheque for the full amount of the deposits, waiving his right to withhold $35.

During the hearing, the landlord characterized this mistake as "not a big deal" and suggested that the tenants bore some responsibility for the length of the delay, as they did not ask for its return sooner. He characterized the tenant's position that they are entitled to an amount equal to double the deposits as "unreasonable" and that the tenants were being difficult and attempting to "use and abuse" the system.

In their application, which was filed on June 17, 2021, the tenants seek an amount equal to double the security deposit less the $35 they agreed could be deducted. At the hearing the stated that this amount should be reduced by $1,450 to reflect the amount the landlord has already returned.

The landlord argued that he should not required to pay any amount, as he made an honest mistake that he rectified as soon as he was made aware of it.

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 evidence presented at the hearing, I find that the tenancy ended on May 31, 2021 and that the tenants provided their forwarding address in writing to the landlord that same date. I find that the tenants provided a security deposit and a pet damage deposit of $735 each to the prior landlord and the current landlord holds these amounts in trust for the tenants. I find that the parties agreed, at the time of the move-out inspection, that the landlord could retain $35 of the deposits.

The landlord neither returned the deposits to the tenants nor made an application for dispute resolution claiming against the deposit within 15 days of receiving the end of the tenancy and receipt of the forwarding address (June 15, 2021).

Section 38(1) of the Act does not require a tenant to remind a landlord of their obligation to return a deposit. The responsibility for complying with section 38(1) lies entirely with the landlord.

As the landlord did neither returned the deposits nor applied for dispute resolution, claiming against the deposits within 15 days from receiving the tenants' forwarding address. I find that he 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 against the 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. It does not include an exception for an honest mistake or provide leniency for a landlord who acts diligently to remedy a mistake once they learned of it. There is nothing abusive or unreasonable about a tenant exercising their rights under this section. It is a landlord's obligation to know the law that governs their business, and a breach of this law (even an honest one) triggers the aforementioned section.

Residential Tenancy Branch Policy Guideline 17 sets out how this doubling is to occur when the parties agree that the landlord may retain a portion of the security deposit:

> The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:
> […]
> - Example C: A tenant paid $400 as a security deposit. The tenant agreed in writing to allow the landlord to retain $100. The landlord returned $250 within 15 days of receiving the tenant's forwarding address in writing. The landlord retained $50 without written authorization.
>
> The arbitrator doubles the amount that remained after the reduction authorized by the tenant, less the amount actually returned to the tenant. In this example, the amount of the monetary order is $350 ($400 - $100 = $300 x 2 = $600 less amount actually returned $250).

As such, as the landlord has failed to comply with section 38(1), I must order that they pay the tenants $1,380, calculated as follows ($1,450 - $35 = $1,415; $1,415 x 2 = $2,830; $2,830 - $1,450 = $1,380).

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

Conclusion

Pursuant to sections 62 and 72 of the Act, I order that the landlord pay the tenants $1,480, representing the following:

Description	Amount
Double amount of deposits landlord obligated to return	$2,830.00
Filing fee	$100.00
Credit for returned security deposit	-$1,450.00
Total	**$1,480.00**

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: February 7, 2022

Residential Tenancy Branch