



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

The Tenant applies for the following relief under the *Residential Tenancy Act* (the “Act”):

- Return of her security deposit pursuant to s. 38; and
- Return of her filing fee pursuant to s. 72.

V.D. appeared on her own behalf as the former Tenant. The former Landlords did not appear, nor did someone appear on their behalf. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Landlords did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The Tenant affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Tenant confirmed that she was not recording the hearing. I further advised that the hearings are recorded automatically by the Residential Tenancy Branch.

The Tenant advised that she served the Landlords with a copy of the Notice of Dispute Resolution and with her evidence by way of registered mail sent on October 6 and 8, 2021. She advised that four registered mail packages had been sent out, one to each Landlord on the dates mentioned above. The Tenant further advised that the registered mail was sent to the forwarding address the Landlords had provided her in August 2021 and that one of the packages, one sent to G.B. on October 8, 2021, was returned to her.

I am satisfied that the Tenant served her application materials in accordance with the Rules and the *Act*. I find that the Tenant served the Landlords with the Notice of Dispute Resolution and her evidence by way of registered mail sent on October 6 and 8, 2021 in

accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Landlords received the Tenant's application materials on October 13, 2021.

The Landlords provided no evidence to the Residential Tenancy Branch in response to the Tenant's evidence.

Issue(s) to be Decided

- 1) Is the Tenant entitled to the return of her security deposit?
- 2) Does the doubling provision of s. 38 apply?
- 3) Is the Tenant entitled to the return of her filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Tenant confirmed the following details with respect to the tenancy:

- She took occupancy of the rental unit on August 10, 2020.
- Vacant possession of the rental unit was given to the Landlords on August 31, 2021.
- Rent of \$2,250.00 was payable on the first day of each month.
- A security deposit of \$1,125.00 was paid to the Landlords. No pet damage deposit was paid.

A copy of the written tenancy agreement was put into evidence by the Tenant which corresponds to the information provided by the Tenant at the hearing.

The Tenant advised that no written move-in or move-out inspection had been conducted during the tenancy. She denied ever receiving a condition inspection report from the Landlord.

The Tenant indicates that she provided the Landlords with her forwarding address by way of written note personally delivered to the Landlords on August 31, 2021 at the same time she handed over the keys for the rental unit to the Landlords. A copy of the forwarding address note was put into evidence by the Tenant.

The Tenant advised that the Landlord had not returned her the security deposit on the basis that a fine had been levied against the Landlords by the building's strata, which the Tenant says totaled \$450.00. The Tenant indicates that the fine was charged on a daily basis in the amount of \$50.00 for each day that cans/bottles were left outside on the balcony by the Tenant. The Tenant says she did not have notice to correct her actions until being notified by the Landlord that the strata had levied the \$450.00 fine.

The Tenant says that A.B. sent her an e-transfer in the amount of \$675.00 sometime in September 2021, though could not remember the specific date. The Tenant says she did not consent to the \$450.00 being withheld by the Landlords. The Tenant indicates that she refused to accept the \$675.00 for fear that it would result in an inference that she had consented to the \$450.00 fine being deducted by the Landlords.

Since refusing to accept the \$675.00, no further attempted payments have been made and the total security deposit of \$1,125.00 has been retained by the Landlords.

Analysis

The Tenant seeks the return of her security deposit and filing fee.

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. In this case, that deadline was on September 15, 2021.

Pursuant to s. 23 of the *Act*, a landlord and tenant must inspect the condition of the rental unit on the day the tenant is entitled to take possession or on another date that the parties agree to. Section 23(4) of the *Act* specifies that a landlord must complete a condition inspection report in accordance with the regulations. Section 23(5) provides that the parties are to sign the inspection report and the landlord is to provide a copy to the tenant.

Under s. 24(2)(c) of the *Act*, a landlord's right to claim against the security deposit is extinguished if the landlord does not complete an inspection report and give it to the tenant.

I accept the uncontradicted evidence of the Tenant that no move-in inspection report had been completed. Given this, s. 24(2)(c) comes into effect such that the Landlords'

right to claim against the security deposit for damages to the rental unit was extinguished. This meant that the Landlords had to either file a claim against the security deposit for something other than damages to the rental unit or return the security deposit in full by no later than September 15, 2021. In this case, the Landlords did neither.

Under s. 38(6) of the *Act*, when a landlord fails to either repay or claim against the security deposit within the 15-day window, the landlord may not claim against the security deposit and must pay the tenant double their deposit. Policy Guideline 17 provides guidance with respect to the return of security deposits. It states that arbitrators will apply the doubling provision of s. 38(6) unless the tenant specifically waives the doubling of the deposit, either on their application or in the hearing. In this case, I find that the Tenant has not specifically waived the application of s. 38(6).

Policy Guideline 17 provides further guidance with respect to the application of s. 38 in a variety of contexts, including the following which is relevant to the present matter:

Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is $\$525.00$ ($\$800 - \$275 = \$525$).

In this case, I accept the undisputed evidence of the Tenant that she did not consent to the withholding of the \$450.00 by the Landlords. Despite refusing to accept the \$675.00 in September 2021, I find that this point is not relevant to the analysis as Policy Guideline 17 makes no provision for this type of scenario, nor does the *Act* specify that this type of scenario should be taken into account. I accept the undisputed evidence of the Tenant that the Landlords retain the security deposit in full. Accordingly, I find that the Landlords failed to return the security deposit and attempted to withhold an amount without the written consent of the Tenant. Therefore, the Tenant is entitled to double of the security deposit, which in this case is \$2,250.00 ($\$1,125.00 \times 2$) as the Tenant did not accept the amount of \$675.00.

As the Tenant was successful in her application, I find that she is entitled to the return of her filing fee of \$100.00 and order pursuant to s. 72 of the *Act* that the Landlords pay this to her.

Conclusion

The Tenant is entitled to the return of her security deposit and the doubling provision of s. 38(6) applies under the circumstances such that the Landlords are to pay her \$2,250.00 under s. 38(6) of the *Act*.

The Tenant is entitled to the return of her filing fee of \$100.00 and I order that the Landlords pay the Tenant's filing fee pursuant to s. 72 of the *Act*.

Taking the above into account, I make a total order pursuant to s. 67 that the Landlords pay **\$2,350.00** (\$2,250.00 for double the security deposit + \$100.00 for the filing fee) to the Tenant.

It is the Tenant's obligation to serve the monetary order on the Landlords. If the Landlords do not comply with the monetary order, it may be filed by the Tenant with 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 26, 2022

Residential Tenancy Branch