



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on September 22, 2021 (the "Application"). The Tenant applied for return of double the security deposit as well as reimbursement for the filing fee.

The Tenant appeared at the hearing. The Landlord appeared at the hearing with P.N. to assist given a language barrier. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and all oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The parties agreed on the following. The Tenant agreed to rent the unit from the Landlord and paid the security deposit. The tenancy was supposed to start June 01, 2021, and was to be a month-to-month tenancy. Rent was to be \$1,900.00 per month

due on the first day of each month. The Tenant paid a \$950.00 security deposit on May 07, 2021.

The parties agreed on the following. The Tenant never moved into the rental unit. The Tenant ended the tenancy May 18, 2021.

The Tenant testified that they provided the Landlord with their forwarding address in writing in a June 04, 2021, letter which was sent by regular mail. P.N. testified that they do not remember when they received the Tenant's forwarding address, but it was some time in June of 2021.

The parties agreed on the following. The Landlord did not have an outstanding Monetary Order against the Tenant at the end of the tenancy. The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep a specific amount of the security deposit.

P.N. acknowledged the Landlord did not apply to the RTB to keep the security deposit.

The Tenant testified that no move-in inspection was done, and the parties did not discuss doing a move-in inspection. P.N. testified that they did a move-in inspection with the Tenant.

The parties agreed no move-out inspection was done and a move-out inspection was not discussed given the circumstances.

The parties submitted documentary evidence which I do not find necessary to outline here given the testimony of the parties.

Analysis

Section 38 of the *Residential Tenancy Act* (the "Act") sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit in full or claim against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

Given the testimony of the parties, I find they entered into a tenancy agreement May 07, 2021. Section 16 of the *Act* states:

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Given the testimony of the parties, I accept the tenancy ended May 18, 2021.

Given the testimony of the parties, I accept the Tenant sent their forwarding address to the Landlord June 04, 2021, by regular mail. I find the forwarding address was sent in accordance with section 88(c) of the *Act*. Pursuant to section 90(a) of the *Act*, I find the Landlord received the forwarding address June 09, 2021.

June 09, 2021 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from June 09, 2021, to repay the security deposit in full or file a claim against it.

I find the Landlord did not return the security deposit or file a claim against it by June 24, 2021. I find the Landlord failed to comply with section 38(1) of the *Act*.

Sections 38(2) to 38(4) of the *Act* state:

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(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...

Given the testimony of the parties, I find that none of the exceptions outlined in sections 38(2) to (4) of the *Act* apply.

Given the above, I find the Landlord failed to comply with section 38(1) of the *Act* in relation to the security deposit and that none of the exceptions outlined in sections 38(2) to 38(4) of the *Act* apply. Therefore, the Landlord is not permitted to claim against the security deposit and must return double the deposit to the Tenant pursuant to section 38(6) of the *Act*. The Landlord must return \$1,900.00 to the Tenant. No interest is owed on the deposit because the amount of interest owed has been 0% since 2009.

Given the Tenant was successful in the Application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to \$2,000.00 and is issued a Monetary Order in this amount.

Conclusion

The Tenant is entitled to \$2,000.00 and I issue the Tenant a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with the Order, the Order may be filed in 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 *Act*.

Dated: April 28, 2022

Residential Tenancy Branch