Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: MNDCL-S, FFL
For the Tenant: MNSD, FFT

Introduction

The Landlord filed an Application for Dispute Resolution on May 11, 2022 seeking compensation for monetary loss or other money owed. They also made a request for an order granting recovery of the fee for filing the Application in this matter. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on July 4, 2022.

The Tenant (as Respondent to the Landlord's Application) attended the hearing. They provided that the Landlord notified them of this hearing via registered mail.

The Landlord did not attend the hearing, although I left the teleconference hearing connection open until 1:42pm to enable the Landlord to call in to this teleconference hearing scheduled for 1:30pm. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed throughout the duration of the call that the Landlord was not in attendance.

The Tenant advised they filed their own separate Application on May 17, 2022. They advised the Landlord of their Application via registered mail, and provided that tracking number. The Tenant applied for the return of the security deposit and pet damage deposit in full, plus reimbursement of the Application filing fee.

The Landlord's Application

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss that party's application without leave to reapply.

As the Landlord did not attend to present their Application, I dismiss the Landlord's Application in its entirety, without leave to reapply.

The Tenant's Application

Rule 2.10 of the *Residential Tenancy Branch Rules of Procedure* provide for the joining of separate Applications. I consider that the separate Applications pertain to the same rental unit, with the same parties, and concerning a party's entitled to retain a part of the deposits paid by the Tenant and held by the Landlord. I find also the Landlord's claim against the deposits, and the Tenant's claim to its return, are a consideration of the same facts, with the same or similar findings of fact to resolve each Application.

As permitted by the *Rules*, I join the Tenant's Application to the Landlord's Application. The Tenant's Application receives full consideration below.

Issue(s) to be Decided

Is the Tenant entitled to an Order granting a refund of the security deposit and/or the pet damage deposit, pursuant to s. 38 of the *Act*?

Is the Tenant entitled to recovery of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant provided documentary evidence and oral testimony during the hearing. The relevant portions are as follows:

- The tenancy agreement specified a rental amount in the amount of $4,500 per month.
- The parties signed the tenancy agreement on May 31, 2021 for the tenancy starting on July 1, 2021.

- The Tenant paid a security deposit of $2,250 on June 1, 2021.
- The Tenant paid a pet damage deposit of $2,250 on June 1, 2021.
- The Landlord and Tenant signed a Mutual Agreement to End the Tenancy on April 10, 2022, for the final date of April 30, 2022.
- The Tenant moved out from the rental unit on April 30, 2022.
- They provided a forwarding address to the Landlord via letter dated April 25, 2022.

Analysis

The *Act* s. 38(1) provides that a landlord must either: repay a security and/or pet deposit; or apply for dispute resolution to make a claim against those deposits. This must occur within 15 days after the later of the end of tenancy or a tenant giving their forwarding address.

Following this, s. 38(4) provides that a landlord may retain a security deposit or pet deposit if the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. This subsection specifies this written agreement must occur at the end of a tenancy.

Then, s. 38(6) sets out the consequences where the landlord does not comply with the requirements of s. 38(1). These are: the landlord may not make a claim against either deposit; and, the landlord must pay double the amount of either deposit, or both.

I find as fact, based on their undisputed evidence and testimony, the Tenant gave their forwarding address to the Landlord as provided for in their evidence: they gave this to the Landlord via letter on April 25, 2022. A copy of that letter is in the evidence.

The Landlord applied for dispute resolution within 15 days of the end of the tenancy, on May 11. I find the Landlord did apply for dispute resolution to claim against these deposits within 15 days of receiving this forwarding address. The Landlord did not breach s. 38 of the *Act*.

Because the Landlord was not successful on their claim, they must repay the security deposit amount and the pet damage deposit to the Tenant in full. There is no provision for double of those amounts in this situation. To ensure the Landlord's compliance, I grant the Tenant a monetary order for the full amount of both deposits in total; this is $4,500.

The *Act* s. 72 grants me the authority to order the repayment of a fee for the Application. As the Tenant was successful in their claim, I find they are entitled to recover the filing fee from the Landlord.

Conclusion

I order the Landlord to pay the Tenant the amount of $4,600. I grant the Tenant a Monetary Order for this amount. The Tenant must serve this Monetary Order on the Landlord. Should the Landlord fail to comply with this Monetary Order, the Tenant may file it in the Provincial Court (Small Claims) where it will be 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 s. 9.1(1) of the *Act*.

Dated: July 4, 2022

Residential Tenancy Branch