



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR, FFT

Introduction

On February 23, 2022, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the “Act”) adjourned the tenant’s application for dispute resolution for the following items to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch’s direct request process. The Adjudicator adjourned the direct request for the following reason:

I note that the purpose of the Application for Dispute Resolution by Direct Request is primarily to obtain the return of the deposit(s).

The tenants have indicated that the full security deposit and pet damage deposit have been returned by the landlord. The tenants are only seeking a monetary award for the doubling provision due to the landlord’s late action.

As the tenants are not seeking the return of the deposits themselves, I find this application cannot proceed through the Direct Request process. I find that a participatory hearing is necessary to address the tenants’ claim.

I have been delegated authority under the *Act* to consider the Tenant’s application for:

- A monetary award for the doubling provision due to the landlord’s late action pursuant to s. 38.1 (1); and
- Recovery of the filing fee for this application pursuant to section 72 of the *Act*.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:46 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant testified she served the landlord with the notice of reconvened hearing package with the interim decision and supporting evidence package via registered mail on February 25,

2022. The tenant provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the landlord was deemed served with this package on March 2, 2022, five days after the tenant mailed it, in accordance with sections 88, 89, and 90 of the Act.

At the outset, I advised the tenant of Rule 6.11 of the Rules of Procedure (the “Rules”), which prohibits participants from recording the hearing. The tenant confirmed that they were not recording the hearing.

I also advised the tenant that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in this hearing.

The hearing proceeded in the absence of the Landlord pursuant to Rule 7.3 of the Rules.

Issues to be Decided

Are the tenants entitled to:

- 1) a monetary order for \$975.00 (double the security & pet damage deposit)?
- 2) recover the filing fee?

Background and Evidence

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

The parties entered into a written fixed term tenancy agreement starting December 30, 2019 through December 31, 2020. At the end of the term the tenancy could continue on a month-to-month basis or for another fixed length of time. Monthly rent was \$975.00 payable on the 1st (first) of each month. The tenant paid the landlord a security deposit of \$487.50 and a pet damage deposit of \$487.50. The landlord returned the deposit to the tenant on January 18, 2022.

The tenant is applying for double the security deposit since the landlord did not return the deposit within 15 days from when the tenants moved out of the rental unit. The tenant submitted a copy of the Notice to Vacate signed by the tenants on November 25, 2021 advising the landlord that the tenancy would end as of December 31, 2021. The Notice included the tenants’ forwarding address.

The tenant also uploaded a copy of a Proof of Service Tenant Forwarding Address for the Return of the Security and/or Pet Damage Deposit (RTB -41) that states the forwarding address

was sent to the landlord by email on November 25, 2021 at 3:10 p.m. confirming receipt of the document.

The tenant submitted an outgoing e-mail from the tenants to the landlord dated November 25, 2021 which contained the RTB-41 as an attachment and a copy of the reply email from the landlord also dated November 25, 2021.

The tenant submitted a copy of the Condition Inspection report that took place on January 5, 2022. The tenant testified that the end of tenancy inspection was scheduled for January 4, 2022 but the landlord's agent failed to show. The inspection was then rescheduled for January 5, 2022.

The tenant also submitted an RTB-40, Tenant's Direct Request Worksheet, showing the separate amounts of the security and pet damage deposits, a full reimbursement of the deposits on January 18, 2022, and confirming that the tenancy ended on December 31, 2021. The tenant stated that she has never agreed, in writing or otherwise, for the landlord to retain any amount of the security/pet deposit.

The tenant testified that they vacated the rental unit by 1:00 p.m. and returned the keys to the landlord on December 31, 2021.

The tenant submitted the email chain between her and the landlord with respect to the return of the deposits.

Analysis

The tenants applied for a monetary award for doubling of the security and pet deposits due to the landlord's late action in reimbursing the deposits.

The relevant law, policy, and regulations are as follows:

Order for return of security and pet damage deposit

38.1 (1)A tenant, by making an application under Part 5 [*Resolving Disputes*] for dispute resolution, may request an order for the return of an amount that is double the portion of the security deposit or pet damage deposit or both to which all of the following apply:

- (a)the landlord has not applied to the director within the time set out in section 38 (1) claiming against that portion;
- (b)there is no order referred to in section 38 (3) or (4) (b) applicable to that portion;
- (c)there is no agreement under section 38 (4) (a) applicable to that portion

.....

RTA, s. 38(1), **Return of security deposit and pet damage deposit, reads:**

- 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.

.....

- 38** (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,

.....

- 38** (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.

Policy Guideline #17 "Security Deposit and Set off" reads as follows:

10 The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.

Section 21 of the RTA Regulation identifies the evidentiary weight of a completed report:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, **unless either the landlord or the tenant has a preponderance of evidence to the contrary.**

Pursuant to Rule 6.6 of the Rules, it is the Tenant as applicant who has the onus to prove the claim. The standard is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I accept the undisputed affirmed testimony of the Tenant and accept the following as fact:

- The tenant sent a notice to vacate to the landlord signed and dated November 25, 2021, advising that tenancy would end as of December 31, 2021 and provided a forwarding address.
- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit indicating the forwarding address was sent to the landlord by e-mail at 3:10 on November 25, 2021.
- The tenants vacated the rental unit on December 31, 2021 by 1:00 p.m. and returned the keys to the landlord.
- A copy of a Condition Inspection Report signed and dated January 5, 2022 by both the landlord and the tenant made no mention of any deductions for damages or pets.
- The email chain between the landlord and the tenant confirmed that the full security and pet damage deposit was reimbursed to the tenant on January 18, 2022.

When the tenancy ends and the landlord receives the tenant's forwarding address, the landlord has fifteen (15) days to either return the deposit(s) to the tenant or file an application through the RTB requesting to keep the deposit(s).

Section 38 of the Act provides that, if the landlord does neither, the landlord extinguishes the right to make a claim against the security deposit and/or pet damage deposit for any damage to the rental unit and must pay the tenant double the amount of the deposit.

The End of Tenancy Condition Report made no reference to specific deductions from the security or pet damage deposit. The landlord did not make application requesting to keep the deposits pursuant to s. 38 (1) (d). The tenants did not authorize the landlord to retain the deposit, in writing, pursuant to s. 38(4)(a). There was no order from the director authorizing the landlord to retain the deposit in full or partially pursuant to s. 38 (3) (a) and (b).

The tenants vacated the rental unit on December 31, 2021, provided a forwarding address on November 25, 2021 and received reimbursement of the pet and damage deposit on January 18, 2022. Pursuant to s. 38(1) (a) and (b) the landlord had up to and including January 15, 2022

to repay the deposits. I find the landlord failed to comply with the Act; therefore, pursuant to s. 38(6) the landlord must pay the tenant double the amount of the security deposit and pet damage deposit. Since the landlord has reimbursed the pet damage deposit and the security deposit, the amount owed to the tenant is \$975.00.

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

The total owed to the tenant is \$1075.00 and I issue the tenant a Monetary Order in this amount pursuant to s. 67 of the Act.

Conclusion

Pursuant to sections 67 of the Act, I order that the landlord pay the tenant \$1075.00 amount, representing the following:

$$\begin{aligned} \$975.00 \times 2 \text{ (doubling)} &= \$1950 \\ \$1950.00 - \$975.00 \text{ (less paid)} &= \$975.00 \\ \$975.00 + \$100.00 &= \underline{\underline{\$1075.00}} \end{aligned}$$

The tenant is awarded \$1075.00 and is issued a Monetary Order in this amount. This Order must be served on the landlord. If the landlord fails to comply with this Order, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court. The costs of such enforcement are recoverable from the landlord.

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: October 4, 2022

Residential Tenancy Branch