



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSD, FFT**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for:

- An order for the return of a security deposit or pet damage deposit pursuant to section 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both the tenant and the landlord attended the hearing. As both parties were present, service of documents was confirmed. The landlord acknowledged receipt of the tenant’s Notice of Dispute Resolution Proceedings package and did not note any concern with timely service of documents. The tenant did not acknowledge receipt of the landlord’s evidence package.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Rules and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the *Act*.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issue

The landlord testified that he mis-diarized the date of this hearing and sent correspondences to the tenant when he realized this hearing was coming up. The landlord testified he sent the tenant his documentary evidence by email earlier today and uploaded his evidence to the Residential Tenancy Branch online portal this morning.

Rule 3.15 of the Residential Tenancy Branch Rules of Procedure require that the respondent's evidence be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. The landlord made no indication that this evidence was unavailable to the landlord at the time he received the tenant's Notice of Dispute Resolution Proceedings. I determined that admitting the landlord's late evidence would deny the tenant an opportunity to review the evidence prior to the hearing and would put him at a disadvantage for the hearing. Consequently, the landlord/respondent's documentary evidence was excluded from consideration in this decision. I advised the landlord that his testimony would be fully admissible, as would the tenant's.

The landlord sought to have the tenant's application dismissed because the tenant did not provide copies of receipts or professional estimates or claim amounts on the form RTB-37 Monetary Order Worksheet. I denied the landlord's oral application based on Rule 2.2 which states that the claim is limited to what is stated in the **application**. I note that the tenant indicated in his application that he seeks \$7,250.00 to recover part or all of his security deposit and/or pet damage deposit.

Issue(s) to be Decided

Should the tenant's security deposit and pet damage deposit be returned, doubled?
Should the filing fee be recovered?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the tenant's documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant gave the following testimony. The tenancy began on August 28, 2019, although the tenancy agreement reflects a different date of July 1, 2019. This different commencement date on the tenancy agreement was done at the landlord's request. Rent was set at \$5,250.00 per month, payable on the first day of each month. A

security deposit of \$2,625.00 and a pet damage deposit of \$1,000.00 was collected by the landlord which the landlord continues to hold.

The parties agree that a condition inspection report was not done at the commencement of the tenancy. The tenant testified that none was offered by the landlord. He and his family moved in after the rental unit had been used as a short term rental by the landlord.

The tenant testified that the tenancy ended at 12:00 noon on March 12, 2020 by mutual agreement. The landlord did not offer the tenant an opportunity for a move-out condition inspection report, although on March 5th, the landlord asked to come look at the house with tradespeople because he was considering selling it.

The tenant provided a copy of an email sent May 27, 2020 to the landlord advising him of his forwarding address. During the hearing, the landlord acknowledged receiving the May 27th email with the tenant's forwarding address.

The landlord gave the following testimony. There was a verbal agreement that rent was due on the 28th of every month, despite the tenancy agreement stating it was due on the 1st of each month. No move-in condition inspection report was done with the tenant at the beginning of the tenancy because the tenant was a friend of a friend. He trusted the tenant would leave the rental unit in good condition at the end of the tenancy. The landlord disputes that there was a mutually agreed to end to the tenancy on March 12th, stating it actually ended on April 28th, 2022.

The landlord acknowledges he did not file an application for dispute resolution seeking authorization to retain the tenant's security deposit or pet damage deposit.

Analysis

At the commencement and at the end of the tenancy, the landlord did not pursue a condition inspection of the rental unit with the tenant, as required by section 23 of the *Act*. Pursuant to section 24, the landlord's right to claim against the security deposit **is extinguished** if the landlord does not offer the tenant at least two opportunities for inspection.

Secondly, section 38(1) and (6) of the *Act* addresses the return of security deposits.

- (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.

...

- (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.

In the case before me, pursuant to section 24, the landlord's right to claim against the security deposit was extinguished at the commencement of the tenancy when he failed to conduct a condition inspection report with the tenant. The fact that the tenant was a friend of a friend does not negate the landlord's responsibility to have the tenant agree to the condition of the rental unit in writing at the beginning of the tenancy.

The parties disagree on when the tenancy ended, whether it was March 12th or April 28th. As the tenancy end date is prior to the date the landlord received the tenant's forwarding address by email, on May 27, 2020, it doesn't make any difference in calculating when the landlord was required to return the tenant's security deposit. Further, the option of making an application for dispute resolution claiming against the security deposit and pet damage deposit had already been extinguished by the landlord's failure to pursue a condition inspection report with the tenant at the commencement of the tenancy. Pursuant to section 38, the landlord had until June 15, 2020 (15 days from May 27th) to return the tenant's security deposit and pet damage deposit.

The language of section 38(6)(b) is mandatory. The landlord must pay the tenant **\$5,250.00**, representing a doubled security deposit and **\$2,000.00**, representing a doubled pet damage deposit.

As the tenant's application was successful, the tenant is also entitled to recovery of the **\$100.00** filing fee for the cost of this application.

Conclusion

Pursuant to section 38 of the *Act*, the tenant is awarded a monetary order in the amount of **\$7,350.00**.

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: November 01, 2022

Residential Tenancy Branch