



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBUS CHARITIES ASSOCIATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDB-DR

Introduction

On August 10, 2022, the Tenant made an Application for Dispute Resolution seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. M.G. and B.M. attended the hearing as well, as agents for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord the Notice of Hearing and evidence package by registered mail on October 27, 2022. M.G. confirmed that the Landlord received this package, but only received two pages of documentary evidence. Based on this undisputed testimony, I am satisfied that the Landlord was duly served the Tenant’s Notice of Hearing package. However, as the Tenant was unsure of what documentary evidence was actually served to the Landlord, the only evidence that I will accept and consider when rendering this Decision is the two pages of evidence that M.G. confirmed were served to the Landlord.

B.M. advised that he served the Landlord's evidence to the Tenant by placing it on top of the Tenant's mailbox on November 2, 2022, despite this not being an acceptable method of service under the *Act*. The Tenant confirmed that he received this evidence, and that he did not have any position with respect to how this documentary evidence was served. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a return of the security deposit?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on March 15, 2021, and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on or around July 15, 2022. Rent was established at an amount of \$620.00 per month and was due on the first day of each month. A security deposit of \$310.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

All parties also agreed that a move-out inspection report was conducted on July 13, 2022, and a copy of this was submitted as documentary evidence. It was the Landlord's position that the Tenant signed the report indicating that he permitted the Landlord to keep the entirety of the Tenant's deposit. The Tenant was unsure if he signed this approval on the move-out inspection report. However, all parties did agree that the Tenant provided his forwarding address in writing to the Landlord on that move-out inspection report on July 13, 2022.

The Tenant made submissions confirming that he ended his tenancy early, and in a manner that contravened the *Act*. Despite this, in the Tenant's Application, it appeared as if he was seeking compensation in the amount of half a month's rent, and the return of his security deposit. He submitted that the Landlord re-rented the unit on July 18, 2022.

B.M. advised that the Landlord would attempt to re-rent the unit as a courtesy to the Tenant due to him breaching the *Act* by ending his tenancy improperly, and then would compensate the Tenant for any pro-rated amount if they were successful. He confirmed that the Landlord was able to re-rent the unit on July 20, 2022, and that a cheque for \$375.00 was sent to the Tenant on August 1, 2022. This comprised of a prorated amount of rent for the remaining days in July 2022 when the rental unit was not rented, plus a reduced amount of the security deposit due to the Tenant leaving debris behind in the rental unit. He stated that this first cheque was not cashed, so the Landlord sent a second cheque to the Tenant, in the same amount, on August 30, 2022, which has also not been cashed.

M.G. advised that the Tenant signed the move-out inspection report authorizing the Landlord to keep the entire security deposit. Regardless, as a good faith gesture, the Landlord returned to the Tenant the prorated rent, plus some of the security deposit despite the Tenant giving the Landlord permission to keep the entire deposit.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Section 38(4) of the *Act* permits the Landlord “to retain an amount from a security deposit or a pet damage deposit if 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”.

Based on a review of the evidence before me, I am satisfied that the Tenant did not end the tenancy in accordance with the *Act*, and that the Tenant also signed the move-out inspection report authorizing the Landlord to keep the entire security deposit. Moreover, I accept that despite this, the Landlord still returned to the Tenant the prorated amount of rent, plus some of the security deposit.

As I am satisfied that the Tenant provided written consent for the Landlord to keep his entire deposit, there was no requirement for the Landlord to return any of the deposit at all. Consequently, I find that the Landlord has complied with the requirements of Section 38 of the *Act*, and as a result, the Tenant’s Application is dismissed in its entirety.

Conclusion

The Tenant’s Application is dismissed without leave to reapply.

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: December 7, 2022

Residential Tenancy Branch