



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding A/J INTERNATIONAL SETTLEMENT
GROUP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

WY and XY appeared for the tenant in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application') In accordance with section 89 of the *Act*, I find that the landlord duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed with the hearing.

Issues(s) to be Decided

Is the tenant entitled to return of their security deposit?

Is the tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed term tenancy began on September 1, 2019, and ended on August 31, 2020. Monthly rent was set at \$2,600.00, payable on the first of the month. The landlord still holds the security deposit of \$1,300.00 for this tenancy. Both parties confirmed in the hearing that the tenant had provided a forwarding address to the landlord on July 8, 2021 by way of email, requesting the return of their deposit.

The tenant originally filed their application for the return of their security deposit as part of the direct request process on July 27, 2021 after the landlord failed to return their security deposit. That application was dismissed with leave to reapply as the Adjudicator was not satisfied that the tenant had met the service requirements for that application.

The landlord filed an application for a monetary claim related to the tenancy on March 24, 2021, and a hearing was set to hear the matter on August 24, 2021. A decision was rendered on August 25, 2021 in relation to the landlord's application. Although the landlord did make reference to the security deposit in their evidentiary materials for that hearing, the Arbitrator did not make any orders for the landlord to retain or deduct from the security deposit. The landlord was granted a monetary order for unpaid utilities and recovery of the filing fee totalling \$345.70.

After that hearing was held, the landlord retained the tenant's security deposit with the explanation that they required the deposit to pay for damage caused by the tenant. The tenant subsequently filed this new application for the return of their deposit on May 3, 2022 as the landlord continued to keep the tenant's deposit.

Analysis

Section 38 (1) of the *Act* states that within 15 days of the latter of receiving the tenant's forwarding address in writing, and the date the tenant moves out, the landlord must either return the tenant's security deposit, or make an application for dispute resolution against that deposit.

Section 38(4) of the *Act* states that:

(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, or
- (b)after the end of the tenancy, the director orders that the landlord may retain the amount.

As per the Act, the tenant has the right to apply for double the deposit if the landlord fails to accomplish the above.

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.

(2)In the circumstances described in subsection (1), the director, without any further dispute resolution process, may grant an order for the return of the amount referred to in subsection (1) and interest on that amount in accordance with section 38 (1) (c).

In this case, I find it undisputed that the tenant had provided a forwarding address to the landlord on July 8, 2021, and requested the return of their deposit. Although the landlord did file an application for dispute resolution on March 24, 2021, and a hearing was held to deal with that matter on August 24, 2021, the Arbitrator did not make any orders allowing the landlord to withhold any portion of the tenant's security deposit. The landlord does not dispute that they kept the deposit after that hearing for damage in the home. The landlord has not filed any subsequent applications to keep the deposit or apply the deposit against such damage.

In accordance with section 38.1 of the *Act*, I find that the tenant is entitled to a monetary order amounting to double the original security deposit.

As the tenant's application has merit, I allow the tenant to recover the \$100.00 filing fee.

Conclusion

I issue a \$2,700.00 Monetary Order in the tenant's favour for double the security deposit and recovery of the \$100.00 filing fee.

The tenant is provided with this Order and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this 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 *Residential Tenancy Act*.

Dated: March 1, 2023

Residential Tenancy Branch