

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

The tenant testified that he personally served the landlord with his application for dispute resolution and evidence in July of 2022. The landlord testified that the tenant served one of her kids with his application for dispute resolution and evidence and that she received the documents in July of 2022. I find that the landlord was sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act*, with the tenants application for dispute resolution and evidence because receipt was confirmed.

The landlord did not submit evidence for consideration.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Evidence and Analysis

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts:

- this tenancy began on June 15, 2021 and ended on June 30, 2022,
- monthly rent in the amount of \$1,500.00 was payable on the first day of each month,
- a security deposit of \$800.00 was paid by the tenant to the landlord,
- the landlord returned \$137.50 of the tenant's security deposit to the tenant on July 18, 2022 and \$50.00 of the tenant's security deposit to the tenant on August 1, 2022,
- the tenant did not give the landlord authorization in writing to retain any portion of the security deposit,
- the landlord did not file an application for dispute resolution seeking authorization to retain any portion of the tenant's security deposit.

A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenant testified that he texted the landlord his forwarding address on June 30, 2022. The landlord testified that she received the tenant's forwarding address via text on June 30, 2022. I find that the landlord was sufficiently served on June 30, 2022, for the purposes of this *Act*, pursuant to section 71 of the *Act*, with the tenant's forwarding address because receipt was confirmed on that date.

Both parties agreed that they completed a joint walk-through at the start of the tenancy and that the landlord did not complete a move in condition inspection report.

Both parties agree that the parties walked through the subject rental property at the end of the tenancy and that the landlord did not complete a move out condition inspection report.

I find that the landlord breached sections 23 and 35 of the *Act* by failing to complete move in and out condition inspection reports and that pursuant to sections 24 and 36 of the *Act*, the landlord's right to retain the tenant's security deposit for damage was extinguished.

Pursuant to section 38(1) of the *Act*, I find that the landlord was obligated to return the tenant's security deposit to the tenant within 15 days of the tenant's provision of his forwarding address in writing. I find that since the landlord failed to return the entire deposit to the tenant within 15 days of receipt of the tenant's forwarding address, the tenant is entitled to receive double the return of his security deposit less the amounts returned by the landlord, in accordance with section 38(6) of the *Act*. The calculation for same is below:

$$\text{\$800.00 (rent) X 2 (doubling provision) = \$1,600.00 - \$187.50 (amount of deposit returned to tenant) = } \mathbf{\text{\$1,412.50.}}$$

The landlord testified that she thought she could retain the tenant's security deposit as long as there was damage, and she had a receipt for the repair. The landlord is incorrect in this viewpoint. The landlord was required to comply with sections 23, 24, 35, 36, and 38 of the *Act*, which she failed to do.

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the \$100.00 filing fee for this application for dispute resolution, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$1,512.50.

The tenant is provided with this Order in the above terms and the landlord must be served with 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: April 19, 2023

Residential Tenancy Branch