



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding CCPR PARKE RESIDENCE G.P.
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL, MNDCL-S, FFL, MNSDB-DR, FFT

Introduction

This hearing dealt with cross applications pursuant to the *Residential Tenancy Act* (“Act”)

The landlord applied for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant’s security and pet deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

The tenant applied for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to obtain a return of double their security and pet deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

This matter was heard on October 10, 2023 where an adjournment was granted to the landlord. The matter was scheduled to be heard on March 11, 2024 but unable to proceed on that date. The matter was adjourned to today’s date with the consent of each party. Each party confirmed that they were available and were provided the date, time and passcode to join the teleconference. The tenant participated in the teleconference, the landlord did not. The parties confirmed at the previous hearing that they had exchanged their documentary evidence. I am satisfied that the landlord was aware of today’s hearing and the matter proceeded and completed on that basis.

Preliminary Issue – Dismissal of landlord's Application

Rule 7.3 of the RTB *Rules* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any evidence or submissions from the landlord, I order the landlord's entire application dismissed without leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of their security and pet deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to a monetary order as compensation for loss or damage suffered as a result of the landlord's actions?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

GS' undisputed testimony is as follows. The tenancy began on February 15, 2018 and ended on October 31, 2022. The tenant was obligated to pay \$2180.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$2000.00 security deposit and a \$500.00 pet deposit. GS testified that a written condition inspection report was conducted at move in and move out. GS testified that at the move out condition inspection he provided the landlord with his forwarding address on behalf of his mother. GS testified that he provided his forwarding address again by registered mail on November 23, 2022 which was received by the landlord on November 28, 2022. GS testified that the landlord did not return the deposits, nor did they file for dispute resolution within fifteen days as required. GS testified that he wants to be compensated for the \$989.63 for the cost of a professional moving company as he feels that it wasn't necessary. GS testified that he is seeking the return of double the deposits along with the \$100.00 filing fee for this application.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of GS, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Moving Costs

GS's request for the return of moving fees is dismissed without leave to reapply. Although he disputes the cost and feels the landlord couldn't require this as part of the tenancy agreement, there is insufficient evidence that he advised the landlord of his displeasure with this. The landlord asked professional movers to be used, and GS complied. Based on the evidence before me, I dismiss this portion of the application without leave to reapply.

Deposits

GS said he is applying for the return of double the security and pet deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that 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.

And Section 38 (6) says 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.

Based on the undisputed testimony of GS, the documentary evidence before me and in the absence of any disputing evidence from the landlord, I find that the landlord has not

acted in accordance with Section 38 of the Act and that the tenant is entitled to the return of double his deposits in the amount of \$5,000.00 plus \$64.70 in accrued interest.

The tenant is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The tenant has established a claim for \$5,164.70. I grant the tenant an order under section 67 for the balance due of \$5,164.70. This order may be filed in the Small Claims 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 25, 2024

Residential Tenancy Branch