



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNSD

Introduction

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

- a Monetary Order pursuant to section 67 of the *Act*;
- an Order to retain the security or pet deposit pursuant to section 38 of the *Act*, and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenant and landlords attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. The landlords were represented at the hearing by landlord J.C. (the "landlord").

The tenant acknowledged that she received a copy of the landlords' Application for Dispute Resolution and evidentiary package by hand during the first week of February 2017. Neither party were able to confirm the exact day. Pursuant to sections 88 and 89 the *Act*, the tenant is found to have been served with these documents.

Following introductory remarks, the landlord, who was the applicant in this hearing, stated that she wished to withdraw her application as she had already retained from the tenant, the money that was owed to the landlords.

I clarified the nature of the *Act* to the landlord and noted that the only manner in which a landlord can retain any amount from a tenant is by way of an Order from the RTB or with the tenant's prior written consent. The tenant said that she did not provide the landlord with authorization to retain any portion of the deposits. The landlord stated that she did not believe that she would be able to collect any amount from the tenant and for this reason pre-emptively withheld \$965.92 from the tenant's deposits.

At the hearing, I explained to the landlord that withdrawing this application would conclude the hearing, and that this matter would be dismissed without leave to re-apply. The tenant would therefore, be free to pursue any application against the landlords as she saw fit. The landlord stated she understood this and wished to proceed with the withdrawal of her applications.

Issues to be Decided

Was the landlord entitled to retain the Security Deposit?

Background and Evidence

Testimony was provided by both the landlord and the tenant that this tenancy began in June 2016 when the landlords purchased the property from the home's previous owner. The current landlords purchased the property with the tenant in occupation of the rental unit. Rent was \$1,500.00 per month and deposits of \$750.00 (security) and \$450.00 (pet) continue to be held by the landlords.

At the outset of the hearing the landlord explained that she did not want to pursue her Monetary Order or her application to retain the Security Deposit because she had retained \$965.92 from the tenant for alleged losses she had suffered. On March 6, 2017 the landlords returned \$234.08 to the tenant. The tenant acknowledged receiving this money.

The tenant stated that she moved out on January 31, 2017. Both parties acknowledged that no condition inspection was performed by either party at the conclusion of the tenancy. The tenant described having emailed her forwarding address to the landlords on February 3, 2017. The landlord could not confirm the exact date that she had received this address but acknowledged being in receipt of it. On February 8, 2017 the landlords applied to the *Residential Tenancy Branch* for dispute resolution.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit. One of these actions must occur within 15 days after the *later* of either the end of the tenancy and/or upon receipt of the tenant's forwarding address in writing. This provision does not apply if the landlord has obtained the tenant's written authorization to retain all, or a portion of the security deposit to offset damages or losses arising out of the tenancy as per

section 38(4)(a) of the *Act*. A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so, has been issued by an arbitrator.

Following the conclusion of the hearing, I consulted the *Act*, along with the *Residential Tenancy Policy Guideline*. A close examination of *Residential Tenancy Policy Guideline* #17(C)(1) states that I must consider the matter of the security and pet damage deposits because she no longer has the authority to retain any portion of those deposits once she withdrew her application. Specifically it notes;

The arbitrator will order the return of a security deposit, or any balance remaining, less any deductions permitted under the *Act*, on:

- a landlord's application to retain all or part of the security deposit

...unless the tenant's right to the return of the security deposit has been extinguished under the *Act*. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, *whether or not the tenant has applied for dispute resolution for its return*.

The landlords did not receive the tenant's written authorization to retain all, or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a) of the *Act*, nor did they receive an order from an Arbitrator enabling them to do so. The landlords applied for dispute resolution within 15 days of receiving a copy of the tenant's forwarding address on February 3, 2017.

After withdrawing their application to retain the remaining portion of the tenant's security and pet damage deposits, I find that the landlords have no legal right to continue to hold the \$965.92 of these deposits they still hold. I am therefore making a monetary award in the tenant's favour in the amount of \$965.92 for the outstanding pet and security deposits that have not been returned.

As the landlords withdrew a portion of their application and were unsuccessful in their application to retain the security deposit, the landlords must bear the cost of their own filing fee.

Conclusion

The landlords' application for a Monetary Order is withdrawn.

I issue a Monetary Order in the tenant's favour in the amount of \$965.92 against the landlords. The tenant is provided with a Monetary Order in the above terms and the

landlord(s) must be served with this Order as soon as possible. Should the landlords 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: May 9, 2017

Residential Tenancy Branch