



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GOLDEN CHEERS HOLDING LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

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

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to speak, present evidence, provide affirmed testimony and call witnesses. The corporate landlord was represented by its agent NM (the "landlord").

As both parties were in attendance I confirmed that there were no issues with service of the landlord's application for dispute resolution or evidentiary materials. The tenant confirmed receipt of the landlord's materials. The tenant said that he had not submitted any written evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with copies of the landlord's application package.

Issue(s) to be Decided

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

Background and Evidence

The parties agreed on the following facts. This tenancy began in August, 2014 and ended on August 31, 2016. A security deposit of \$537.50 was paid at the start of the tenancy and is still held by the landlord. The monthly rent at the end of the tenancy was \$1,075.00 payable on the

first. While a copy was not submitted into written evidence the parties confirmed that a condition inspection report was prepared at the start of the tenancy.

The tenant gave written notice to end the tenancy to the landlord on August 7, 2016. The tenant moved out of the rental unit by August 31, 2016. No condition inspection report was prepared at the end of the tenancy. The tenant said that the landlord did not contact him to arrange a time to inspect the rental unit and prepare a condition inspection report. The tenant gave the landlord written notice of a forwarding address in a letter received by the landlord on April 19, 2017. The tenant testified that he has not given written authorization to the landlord that the landlord may retain any portion of the security deposit.

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 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the undisputed evidence of the parties that the tenants provided written notice of the forwarding address on April 19, 2017. I accept the undisputed evidence of the parties that the landlord did not return the security deposit, nor did they have written authorization from the tenant that they may retain any portion of the security deposit. The landlord filed his application to retain the security deposit on April 25, 2017, within the 15 days provided under the *Act*.

While the landlord testified that he has incurred damages and loss including lost rent, cleaning costs and rubbish removal, the landlord has not made an application under the *Act* for damage or loss. Therefore, I do not find the landlord's evidence in regards to his loss persuasive in regards to the issue of the security deposit.

However, the parties have testified that no condition inspection report was prepared at the end of the tenancy. Section 36 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

36 (2) ...the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
(a) does not comply with section 35(2) [2 opportunities for inspection]

Section 35(2) sets out that:

35(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

I accept the undisputed evidence of the parties that the landlord did not offer the tenant 2 opportunities for an inspection of the rental unit. Accordingly, I find that the landlord has extinguished any right to claim against the security deposit by failing to prepare a condition inspection report at the end of the tenancy.

Based on the undisputed evidence before me, I find that the landlord has failed to return the tenant's security deposit in full. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a \$1,075.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

As the landlord's application was not successful the landlord is not entitled to recover the filing fee for this application.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1,075.00 against the landlord. The tenant is provided with a Monetary 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: September 19, 2017

Residential Tenancy Branch