



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on April 28, 2018, wherein the Tenant requested return of the security deposit paid and recovery of the filing fee.

The hearing was scheduled for teleconference at 1:30 p.m. on October 30, 2018. Only the Tenant called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlords did not call into this hearing, although I left the teleconference hearing connection open until 1:54 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

As the Landlords did not call in, I considered service of the Tenant's hearing package. The Tenant testified that he served the Notice of Hearing and the Application by registered mail sent to the Landlords at the company's office address as noted on the Application. A copy of the registered mail tracking number is included on the unpublished cover page of this my Decision. The Tenant provided evidence that the package was signed for by the Landlord on May 2, 2018.

I accept the Tenant's testimony and find the Landlords were duly served as of May 2, 2018 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to return of double his security deposit paid?
2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified that this tenancy began May 2008. Monthly rent was originally \$900.00 and the Tenant paid a \$450.00 security deposit and pet damage deposit.

In 2016 the rental property was sold. The new Landlords provided the residents with a letter confirming the sale and directing all correspondence to a numbered company, care of a holding company located in a city adjacent to the city in which the rental unit was located. A copy of this letter was provided in evidence by the Tenant. Notably, the Landlord named on the Tenant's Application for Dispute Resolution is as directed in this letter from the purchaser.

The Tenant testified that the tenancy ended on December 31, 2017.

The Tenant testified that when he gave his notice to end the tenancy in November of 2017, he also provided the Landlord with his forwarding address. A copy of that letter was provided in evidence.

When the Landlord failed to return his security deposit, the Tenant sent another letter to the Landlord on March 30, 2018; a copy of that letter was also provided in evidence.

The Tenant testified that in response to his request for return of his security deposit, the Landlord, E.A., responded that the Tenant left items behind and as such they felt entitled to retain the security deposit.

The Tenant submitted that he only left items which the new tenant asked to have, as well as a piano as the previous owner wanted the piano for his granddaughter. The

Tenant also stated that he told E.A. that if the new tenant did not want these items he would return and move the items.

The Tenant further stated that the Landlord did not perform a move out condition inspection as required by the Act.

The Tenant confirmed he did not agree to the Landlords retaining any portion of his security deposit.

Analysis

The Tenant applies for return of his security deposit pursuant to section 38 of the *Residential Tenancy Act* which provides as follows:

Return of security deposit and pet damage deposit

38 (1) 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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(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.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) 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 above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenants undisputed evidence that he did not agree to the Landlords retaining any portion of his security deposit.

I find that the Landlords received the Tenant's forwarding address in writing on November 30, 2017. I further find that the tenancy ended on December 31, 2017.

The Landlords failed to return the funds to the Tenant or apply for arbitration within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant as required under section 38(1) of the *Act*.

Residential Tenancy Branch Policy Guideline 17--Security Deposit and Set off provides as follows:

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit. Where the landlord has to pay double the security deposit to the tenant, interest is calculated only on the original security deposit amount before any deductions and is not doubled.

As such, and pursuant to section 38(6), the Tenant is entitled to return of double the deposit paid in addition to interest on the original amount calculated as follows:

\$450.00 x 2 = \$900.00	pursuant to section 38(6) of the <i>Act</i>
+ \$4.52	interest on the original \$450.00 calculated from May 1, 2008 to October 30, 2018—the date of the hearing
= \$904.52	Total payable

Having been successful in his Application I also award the Tenant recovery of the \$100.00 filing fee for a total of \$1,004.52.

Conclusion

The Tenant is granted a formal Monetary Order in the amount of **\$1,004.52**. The Tenant must serve a copy of the Order on the Landlords as soon as possible. Should the Landlords fail to comply with this Order, the 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: November 7, 2018

Residential Tenancy Branch