



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNSD

Introduction

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order in the amount of \$5,000 representing an amount equal to two times their security deposit pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

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

The tenants testified, and the landlord confirmed, that the tenants served the landlord with the notice of dispute resolution form and supporting evidence package. The landlord testified, and the tenants confirmed, that the landlord served the tenants with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Issue(s) to be Decided

Are the tenants entitled to:

- 1) a monetary order for \$5,000; and
- 2) recover their filing fee from the landlord?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agree on all the relevant facts of this case:

- 1) On May 5, 2016, the parties entered into a written tenancy agreement. Monthly rent was \$5,200.
- 2) The tenants paid the landlord a security deposit of \$2,500.
- 3) On May 21, 2019, the landlord filed an application against the tenants seeking approximately \$25,000 in damages for the tenants' unpaid rent and for damage or loss due to breaches of the Act (the "**Landlord's Application**").
- 4) In the Landlord's Application, the landlord applied to retain the security deposit in partial compensation of these damages.
- 5) On June 1, 2019, the tenancy ended.
- 6) On July 8, 2019, the tenants gave their forwarding address to the landlord in writing.
- 7) On July 31, 2019, the tenants filed this application.
- 8) On August 27, 2019, the Landlord's Application came to a hearing at the residential tenancy branch. The presiding arbitrator dismissed the Landlord's Application and ordered that the landlord return the entire security deposit to the tenants.
- 9) On September 9, 2019, the landlord returned the security deposit to the tenants.

The tenants argue that the landlord neither returned the security deposit to them nor apply to keep the security deposit within 15 days of receiving their forwarding address, as required by section 38 of the Act.

The landlord agreed but testified that she did not do either of these options because the Landlord's Application was pending, in which she had already applied to keep the security deposit.

The tenants argued that the Landlord's Application was not properly made against the security deposit. They argued that only claims for physical damage to the rental property may be made against the security deposit, and that any other claims against the security deposit are invalid. As such, they argued, the Landlord's Application does not satisfy the section 38 requirements. The tenants stated that, had the Landlord's

Application been a claim for compensation relating to physical damage to the rental unit they would not have any basis for this claim (that is, the existence of the Landlord's Application would be sufficient to satisfy the section 38 requirements).

Analysis

Section 38 of the Act states:

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.

(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.

The tenants stated that, if the Landlord's Application was properly made against the security deposit, then they would have no basis for their present claim. As such, I find that it is not necessary for me to determine whether a claim made against the security deposit prior to the end of the tenancy and provision of the forwarding address would be sufficient to satisfy the requirements of section 38(1)(c) or (d). By taking the position they have the tenants have implicitly agreed that it would satisfy these requirements.

The basis for the tenants' application lies in their understanding that a security deposit may only be used to pay for physical damage to the rental unit. They say that because the Landlord's Application was rooted in a claim for compensation for non-payment of rent and for the tenants' breach of the Act, it was not proper for the landlord to have applied to keep the security deposit.

Section 1 of the Act defines “security deposit”:

"security deposit" means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property

[emphasis added]

This definition does not restrict the use of the security deposit to compensation for physical damage to the rental unit. It is much broader. A security deposit may be applied to any monetary award ordered against a tenant for any amount a tenant is liable to pay a landlord. Indeed, the Act specifically uses the term “security deposit” over the term “damage deposit” to provide added clarity that such a deposit may be applied to more than just physical damage.

A “security deposit” is intended to provide a landlord with a measure of security in so far that if a tenant becomes liable to pay a landlord damages, a landlord has the security of knowing they would be able to recover at least a portion of the money they are awarded.

Section 72(2) further reinforces the idea that a security deposit can be applied in satisfaction (or partial satisfaction) of any type of monetary order. It states:

Director's orders: fees and monetary orders

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

[...]

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

As such, I find that the tenants have brought this claim under a mistaken apprehension of the state of the law. A security deposit can be applied to a monetary order for damages of any sort, not just one arising from physical damage to the rental unit. It was permissible for the landlord to apply to keep the security deposit in the Landlord's Application. As such, I find that the landlord has not breached section 38(1) of the Act, and that the tenants are not entitled to the relief they seek.

As the tenants have been unsuccessful in this application, I decline to order that the landlord pay them their filing fee.

Conclusion

I dismiss the tenants' application, without leave to reapply.

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 26, 2019

Residential Tenancy Branch