



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with a tenant's application for return of double the security deposit. The tenant and the tenant's interpreter appeared for the hearing; however, there was no appearance on part of the landlord.

The tenant submitted that the hearing package was sent to the landlord within three days of receiving the hearing package from the Residential Tenancy Branch via registered mail using the landlord's service address as it appears on the tenancy agreement and the move-out inspection report.

I continued to hear from the tenant, conditional upon receiving further documents from the tenant to confirm the landlord was duly served. I ordered the tenant to provide me with a copy of the registered mail receipt, the tenancy agreement and the move-out inspection report so that I could verify submissions concerning service of the hearing documents.

The tenant provided me with a copy of the tenancy agreement and the move-out inspection report, as I ordered him to do, even though he had not included these documents in the package sent to the landlord. I was of the view this was non-prejudicial to the landlord since the landlord generated these documents and ought to have a copy of these documents and the registered mail tracking number is recorded on the cover page of this decision.

The tenant provided the documents I ordered him to provide and upon review of these documents, I find the registered mail was mailed on September 13, 2019 and delivered on September 16, 2019 and the service address used to mail the documents is the landlord's service address identified on the tenancy agreement and the move-out

inspection report. Therefore, I find I am satisfied the tenant served the landlord with this Application for Dispute Resolution in a manner that complies with the Act and I continue to consider the tenant's request for double security deposit.

In filing this Application for Dispute Resolution, the tenant appears to have reversed the landlord's first name and last name when I compare the landlord's name to the tenancy agreement and the move-out inspection report. I have amended the style of cause so that the landlord's name is consistent with the tenancy agreement and the move-out inspection report prepared by the landlord.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit?

Background and Evidence

The tenancy started in December 2018 for a fixed term set to end on June 30, 2019. The landlord collected a security deposit of \$1,150.00 and the rent was set at \$2,300.00 payable on the first day of every month.

The tenant testified that the landlord asked the tenants to leave by the end of the fixed term as the landlord had agreed to rent the unit to another tenant. The tenants vacated the rental unit and a move-out inspection was performed on June 29, 2019. The landlord prepared a move-out inspection report and the parties signed the inspection report.

The tenant testified that at the move-out inspection the tenant took responsibility for some damage to the rental unit but that he did not authorize the landlord to deduct a specific amount from the security deposit. The tenant testified that he offered to make the repairs but the landlord was not agreeable to that so the landlord was to obtain quotes to repair the damage and let the tenant know how much the repairs would cost. The tenant testified that he received an email from the landlord whereby the landlord indicated the repairs would cost \$1,000.00 and a subsequent email indicating it would cost approximately \$800.00 to repair the damage. The tenant testified that he did not respond to either email or agree the landlord may deduct these amounts from the security deposit.

The tenant testified that several days before filing this Application for Dispute Resolution he sent his forwarding address to the landlord via registered mail. I ordered the tenant to provide me with a copy of the letter he sent to the landlord and the registered mail receipt used to send the forwarding address. The tenant provided a copy of a letter dated July 17, 2019 addressed to the landlord and it includes the tenant's forwarding address. The tenant provided a registered mail receipt, including tracking number. The registered mail was sent on July 17, 2019 was successfully delivered on July 18, 2019. I have recorded the registered mail tracking number on the cover page of this decision.

The tenant testified that the landlord did not file an Application for Dispute Resolution seeking an Arbitrator's authorization to make deductions or retain the tenant's security deposit. Nor, has the tenant received a refund of any part of the security deposit.

Analysis

Section 38(1) of the Act provides that the landlord has 15 days, from the date the tenancy ends, or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit.

Based on the unopposed evidence before me, I find the tenant sent his forwarding address to the landlord on July 17, 2019 via registered mail and it was received by the landlord the following day, or July 18, 2019.

The landlord has not made any Application for Dispute Resolution seeking to make deductions or retain the security deposit and I accept the unopposed evidence that the landlord has not refunded any part of the security deposit to the tenant.

The tenant had also testified that he had not given the landlord consent to make deductions or retain his security deposit. Upon review of the move-out inspection report, on page three, there is conflicting information which I describe and consider below.

In the section that provides for describing damage at the end of the tenancy for which the tenant is responsible [on page 3 of the condition inspection report, section Z.], the landlord appears to have indicated the tenant was responsible for damage to an

electrical outlet in the living room and a dent in the laundry room door and that the landlord would “ask a third party contractor to fix. To get max. three (3) quotations”. Both parties initialled beside the notation that the landlord would get a third party contractor to fix the damage and quotations. I find this area of the condition inspection report is consistent with the tenant’s testimony.

On Page 3 of the inspection report at section Z. 1. the tenant indicated he agreed with the landlord’s assessment of the condition of the rental unit at the end of the tenancy. I find this area of the condition inspection report is consistent with the tenant’s testimony.

In the section that reflects a tenant’s consent for a landlord to make deductions from the security deposit [section Z. 2], it appears the tenant inserted his name and signature and the landlord inserted an amount of \$1,150.00 and the date of June 29, 2019. I find section Z. 2. has inconsistencies with section Z. and the tenant’s testimony. If the tenant had given the landlord consent to retain all of his security deposit, then it would not be necessary to obtain quotations to repair damage and send them to the tenant as the landlord did in this case. Also, it is apparent the landlord inserted the amount of the security deposit rather than the tenant and I find it likely that if it were the tenant’s intention was to authorize the landlord to retain the entire security deposit he would have completed that field. These inconsistencies lead to accept the tenant’s position that he did not authorize the landlord to retain his security deposit.

I am of the view that an inconsistency within a document may result in a term that is unclear and unenforceable. Considering the tenant’s unopposed testimony that he did not give the landlord consent to retain his security deposit and the inconsistencies of the move-out inspection report as described above, I find the tenant did not authorize the landlord to retain the security deposit when he signed the move-out inspection report. Accordingly, I find the landlord was obligated to comply with section 38(1) of the Act by either: making an Application for Dispute Resolution to make a claim against the security deposit or getting the tenant’s written consent to make deductions after providing him with the quotations as they had agreed would happen, and to do so within 15 days of receiving the tenant’s forwarding address. Since the landlord did not do so, I find the tenant entitled to an award for return of double the security deposit, or \$2,300.00 as requested.

I further award the tenant recovery of the \$100.00 filing fee he paid for his Application for Dispute Resolution.

Based on all of my findings and awards above, the tenant is provided a Monetary Order in the sum of \$2,400.00 to serve and enforce upon the landlord.

Although I have found the landlord failed to comply with the requirements of section 38 of the Act, the landlord retains the right to make a claim against the tenant for damages or loss for which he is responsible for up to two years after the tenancy ends as this decision was limited to determining whether the landlord administered the security deposit in accordance with the Act and it was not necessary to make any determination as to the tenant's liability with respect to damage, if any.

Conclusion

The tenant is provided a Monetary Order in the sum of \$2,400.00 to serve and enforce upon the landlord.

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: January 15, 2020

Residential Tenancy Branch