



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing dealt with the adjourned Direct Request Application filed by the Tenants under the *Residential Tenancy Act* (the “Act”). The Tenants applied for the return of her security deposit, and to recover her filing fee. The matter was set for a conference call.

Both the Tenants and the Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenants were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenant testified that they had not received the Landlord documentary evidence that was submitted to this proceeding.

The Landlord was three minutes late in attending this hearing and disconnected five minutes before the hearing ended, causing the Landlord to not be present for the initial or final testimony of the Tenants.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Has there been a breach of Section 38 of the *Act* by the Landlord?
- Are the Tenants entitled to the return of her security deposit?
- Are the Tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Tenants testified that the tenancy began on October 1, 2015, that rent in the amount of \$940.00 was to be paid by the first day of each month and that the Tenants paid the Landlord a \$450.00 security deposit at the outset of this tenancy. The Tenants also testified that they gave notice to end their tenancy and moved out as of August 1, 2019.

The Tenants testified that they provided the Landlord with her forwarding address by a letter they sent by regular post to the Landlord, dated October 8, 2019. The Tenants testified that they could not recall the exact day they mailed the letter but confirmed that it had been no later than November 15, 2019. The Tenants also testified that they emailed the Landlord on March 25, 2020, and send a text messaged on April 19, 2020, inquiring after the return of their security deposit but that they received no reply from the Landlord until they filed for this hearing.

The Landlord testified that they had not returned the deposits to the Tenant due damage to the rental unit that they paid to have repaired during this tenancy. The Landlord testified that they did get a written agreement with the Tenants to keep the security deposit, nor had they submitted an Application for Dispute Resolution claiming against the deposit.

The Landlord expressed frustration with the law that requires them to file for permission to keep the deposit and stated that it should be automatic when there is damage. The Landlord stated that he had been through this process before and that the whole thing is a waist of time.

When this Arbitrator attempted to explain the law to the Landlord and verbally deliver the ruling for this hearing, the Landlord disrupted this proceeding by loudly talking over this Arbitrator stating: "Good luck getting the money, they will need to get a lawyer" and then proceeded to disconnect from this hearing.

Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposits or repay the security deposit and pet damage deposit to the tenant.

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.

I accept the testimony of the Tenants, and find that this tenancy ended on August 1, 2019, the date the Tenant moved out of the rental unit and that they provided their forward address to the Landlord, by mail sent on November 15, 2019. Pursuant to section 90 of the *Act*, I find that the letter containing the Tenants forwarding address was deemed received by the Landlord, five days after it was mailed, on November 20, 2019.

Accordingly, the Landlord had until December 5, 2019, to comply with section 38(1) of the *Act* by either repaying the deposits in full to the Tenants or submitting an Application for Dispute resolution to claim against the deposits. The Landlord, in this case, did neither.

At no time does a landlord have the right to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the landlord and the tenant are unable to agree, in writing, to the repayment of the security deposit or that deductions be made, the landlord must file an Application for Dispute Resolution within 15 days of

the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that the landlord thinks they are entitled to keep even a small portion of the deposit, based on unproven claims.

I find that the Landlord breached section 38 (1) of the *Act* by not returning the Tenants' deposits or filing a claim against the deposits within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

38 (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.

Therefore, I find that pursuant to section 38(6) of the *Act*, the Tenants have successfully proven that they are entitled to the return of double their security deposits. I find for the Tenants, in the amount of \$900.00, granting a monetary order for the return of double the security deposit and pet damage deposit.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been successful in their application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I find that the Landlord breached section 38 of the *Act* when they failed to repay or make a claim against the security deposit and pet damage deposit as required by the *Act*.

I find for the Tenant pursuant to sections 38 and 72 of the *Act*. I grant the Tenants a **Monetary Order** in the amount of **\$1,000.00**. The Tenants are provided with this 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: June 11, 2020

Residential Tenancy Branch