Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR

Introduction

The tenant filed an Application for Dispute Resolution (the "Application") on July 6, 2020 seeking an order granting a refund of the security deposit.

This participatory hearing was convened after an adjudicator of this office determined the correct information about the tenant's contact information – post-tenancy – was not in place to proceed by a direct request proceeding. The adjudicator informed the tenant of this on July 15, 2020. This generated a Notice of Hearing sent to the Applicant tenant. The tenant then informed the landlord of this hearing and served their evidence via registered mail. The landlord prepared documentary evidence in advance of the hearing and likewise forwarded that information to the tenant in advance of the hearing.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on November 6, 2020. In the conference call hearing I explained the process and provided the parties the opportunity to ask questions. The parties both confirmed receipt of the other's evidence. They were able to speak to all points raised by the other in this hearing.

Issue(s) to be Decided

Is the tenant entitled to an Order granting a refund of the security deposit pursuant to section 38(1)(c) of the *Act*?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted a copy of the tenancy agreement for this hearing. The tenant confirmed the details of the agreement. Both parties signed the agreement on May 24, 2019 for the tenancy starting on June 1. The monthly rent was $1,950 per month and the tenant initially paid a security deposit amount of $487.50. In a written submission, the tenant specified that this amount was half of the total damage deposit amount of $975, divided between them and the former roommate. They also paid a pet damage deposit amount of $487. In total, their deposits total $974.50.

The tenancy ended on May 31, 2020. This was the end of the fixed-term tenancy as set out in the agreement. The tenant provided a copy of their letter dated April 24, 2020 to the landlord giving their notice to end the tenancy. They stated the last day of the tenancy was June 1, 2020 and provided their forwarding address. The copy provided shows they emailed this to the landlord on April 24; in the hearing the tenant stated they gave this to the landlord via "regular mail, email, and then texted it."

The landlord acknowledged they received this message via text. In the evidence is a copy of the text message on that same day stating: "That's perfectly fine thanks for letting us know".

In a written submission prepared for this hearing, the tenant specified: "Verbal nor written consent was not given to [the landlord] to retain any amount of my pet or damage deposit."

The tenant also provided an image of a chat message to the landlord. They stated in their submission this was dated May 21, 2020. It states: "I do not consent to [the painting amount] coming out of my deposit when the information I need is the exact [paint] color code." After this, the landlord attached an image of the painter invoice total $367.50.

On June 15, 2020 the tenant sent a longer email to the landlord explaining their position:

> I would like to confirm that you will be returning . . . my portion, $975 of the $1461 damage/pet deposit paid by [the roommate] and myself, to me at this time. On June 14th I received your forwarded paid invoice for $367.50 from [the painter] for painting in the suite, dated June 1st. No explanation was attached. On May 21 you stated via text "Don't worry about it, I will get the painters to paint it." That text was responded to via text from me which stated "I do not consent to that coming out of my deposit when the information I needed was the exact color code." You did not respond to my text nor continue further communication with me.

For the landlord's reference as relevant to this situation, the tenant included portions of the *Act* including section 38.

In a written submission prepared for this hearing, the tenant added:

> On June 20th, 2020 at 22:06PST [the landlord] sent me an e-transfer for $607.50 with no explanation or further correspondence. [The landlord] deducted $367 from my damage deposit which he does not have consent or cause to withhold but is attempting to claim for a paint job of a 108 square foot room within the laneway.

The landlord stated they returned $607.50 of the combined security/pet damage deposit on June 22, 2020. A copy of a transaction record showing this on June 22 is in the evidence. In the hearing, the landlord confirmed they did not file an Application for Dispute Resolution to complete their claim to a portion of the security or pet damage deposit amounts. They provided in the hearing that they had a discussion with the tenant about needing to keep a portion of the deposits for painting; however, there was nothing written from the tenant to the landlord to consent to the landlord retaining a portion thereof.

Analysis

The *Act* section 38(1) states that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must repay any security or pet damage deposit to the tenant or make an Application for Dispute Resolution for a claim against any deposit.

Further, section 38(6) of the *Act* provides that if a landlord does not comply with subsection (1), a landlord must pay the tenant double the amount of the security and pet damage deposit.

From the evidence I can establish as fact that the landlord retained $367.50 of the tenant's security and pet damage deposit amounts. Their reason for doing so was made clear to the tenant and reinforced by way of receipt from the painter for this amount. After this, they returned $607.50 to the tenant via e-transfer.

I find as fact that the tenant moved out of the unit on June 1, 2020. Both parties verified this in the hearing. The tenant previously provided a forwarding address to the landlord when they advised of ending the tenancy, on April 24, 2020.

I find the evidence shows the tenancy ended on June 1, 2020, and the landlord did not subsequently make a claim to retain the portion of the deposits within the legislated timeframe of 15 days. In the hearing, the landlord verified that they did not make a claim by making an Application for Dispute Resolution as provided in the *Act*. It is clear from the evidence that the landlord retained a portion of the total deposit amount for needed painting. This occurred after

the tenant moved out. When the tenancy ended, the landlord had the opportunity to register a claim to retain that portion; however, there is no record that they did so.

Further, the evidence shows the tenant did not consent to this amount being deducted from the deposits.

I find the landlord did not return the deposits to the tenant as the *Act* requires. This constitutes a breach of section 38(1); therefore, section 38(6) applies and the landlord must be double the amount of the security and pet damage deposits.

The landlord previously paid $607.50 to the tenant. I reduce this amount from the doubled-deposit amount, for a final total of $1,341.50 payable by the landlord to the tenant.

Conclusion

I order the landlord to pay the tenant the amount of $1,341.50. I grant the tenant a monetary order for this amount. This monetary order may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: November 10, 2020

Residential Tenancy Branch