



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application for authorization to obtain a return of all or a portion of their security deposit pursuant to section 38 of the *Residential Tenancy Act* ("the Act").

Landlord Mo.L., Landlord Mi.L. and the tenant's agent attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. Landlord Mo.L. (the landlord) stated that he would be the primary speaker for the landlords. The tenant's agent (the agent) stated that the tenant was having difficulty joining the hearing but that the agent had assisted the tenant when filing the application and had authorization to represent the tenant.

While I have turned my mind to all the documentary evidence, including witness statements and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) and the tenant's evidence which were served by way of registered mail on July 20, 2020. In accordance with sections 88 and 89 of the Act, I find that the landlord is duly served with the Application and the tenant's evidence.

The agent confirmed that the tenant received the landlord's evidence package, which was sent by e-mail to the tenant. I find that the tenant is duly served with the landlord's evidence pursuant to section 71 (c), which allows an Arbitrator to find a document sufficiently served for the purposes of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of all or a portion of their security deposit?

Background and Evidence

A tenancy agreement was provided by the tenant which indicates that this tenancy began on November 01, 2018, with a monthly rent in the amount of \$900.00, due on the first day of each month, and a security deposit in the amount of \$450.00. The tenancy agreement is signed by the landlord on October 30, 2018, and states in the terms that it is a month to month tenancy.

The tenant also provided in evidence:

- A copy of a letter from the tenant to the landlord dated August 28, 2019, which notifies the landlord of the tenant's intention to vacate the rental unit on September 16, 2019, and which contains the tenant's forwarding address for the return of the security deposit; and
- A copy of a letter from the landlord to the tenants dated August 29, 2019, in which the landlord confirms receipt of the tenant's notice to end the tenancy. The letter also states that the tenant only paid \$480.00 of \$900.00 for the September 2019 monthly rent and that the tenancy agreement obligates the tenant to pay the monthly rent for October 2019 as well.

The landlord provided in evidence:

- a copy of a letter from the landlord to the tenant dated September 23, 2019, which states that the landlord is withholding \$420.00 of the \$450.00 security deposit for various expenses related to the end of the tenancy; and
- A copy of a cheque from the landlord to the tenant dated September 23, 2019, for \$30.00.

The agent submitted that the tenant moved out of the rental unit on or about September 16, 2019, after providing notice to end their tenancy in the letter dated August 28, 2019. The agent confirmed that the landlord did not return the tenant's full security deposit after the tenant provided the landlord with their forwarding address on August 28, 2019, in the same letter that the tenant gave to end the tenancy. The agent referred to a clause in the tenancy agreement which states that the agreement is a month to month tenancy

The landlord confirmed that they did not make an Application for Dispute Resolution and that they only returned \$30.00 of the tenant's security deposit, without obtaining the tenant's written consent to keep any portion of the security deposit.

The landlord stated that the tenant owed the balance of the monthly rent for September 2020, in addition to other expenses incurred by the landlord at the end of the tenancy. The landlord stated that the tenancy actually began in October of 2013 and that the tenancy agreement provided in evidence, effective as of November 01, 2019, was a renewal of the tenancy agreed to by the landlord at the request of the tenant.

Analysis

Having reviewed the above evidence and testimony, I find that the landlord was duly served with tenant's forwarding address on August 28, 2019, pursuant to section 88 of the *Act*. I further find that this periodic tenancy ended on September 30, 2019, pursuant to section 45 (1) of the *Act*, based on the notice to end the tenancy which the landlords confirmed receipt of on August 29, 2019.

Section 38 (4) allows a landlord to retain an amount from a security deposit if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain an amount to pay a liability or obligation of the tenant.

If the landlord does not have the tenant's agreement in writing to retain a portion or all of the security deposit, section 38 (1) of the *Act* stipulates that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

Since I have found that the landlord was duly served with the tenant's forwarding address, I find that the landlord was obligated to obtain the tenant's written consent to keep any portion of the security deposit or to file an Application within 15 days after the tenancy ended.

I find that it is undisputed that the landlord did not have the tenant's agreement in writing to keep any portion of the security deposit or that the landlord applied for dispute resolution within 15 days of the tenancy ending to retain a portion of the security deposit as required under section 38 (1).

Section 38 (6) of the *Act* stipulates that a landlord who does not comply with section 38 (1) of the *Act* may not make a claim against the security deposit or any pet damage deposit and must pay double the amount of the security deposit, pet damage deposit or both, as applicable.

Pursuant to section 38 (6) of the Act, I find that the landlord must pay the tenant double the security deposit as they have not complied with section 38 (1) of the *Act*.

For the above reasons, I find that the tenant is entitled to a monetary award of \$870.00, which is comprised of double the security deposit less the amount already returned to the tenants plus applicable interest ($(\$450.00 \times 2 = \$900.00) - \$30.00 = \870.00). There is no interest payable over this period.

The landlord may still file an application for lost revenue and damages; however, the issue of the security deposit has now been conclusively dealt with in this hearing.

Conclusion

Pursuant to section 67 of the *Act*, I grant a Monetary Order in the tenant's favour in the amount of \$870.00 for double the security deposit, less the amount already returned.

The tenant is 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 Orders 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 10, 2020

Residential Tenancy Branch