



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYELINE LIVING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDB-DR, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on August 27, 2021 (the “Application”). The Tenant applied for return of double the security and pet damage deposits as well as reimbursement for the filing fee.

The Tenant appeared at the hearing with R.V. for support. R.N. appeared at the hearing for the Landlord. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenant’s evidence and R.N. confirmed receipt of these.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and all oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to return of double the security and pet damage deposits?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate. The landlord's name on the tenancy agreement is different than the Landlord's name. The parties agreed the tenancy agreement was between the prior owner and the Tenant and that the Landlord purchased the rental unit and became the landlord. The tenancy started August 01, 2020, and was for a fixed term ending July 31, 2021. Rent was \$1,500.00 per month due on or before the first day of each month. The Tenant paid a \$750.00 security deposit and \$750.00 pet damage deposit.

The parties agreed the tenancy ended July 31, 2021.

The Tenant testified that they provided their forwarding address to the Landlord on the Condition Inspection Report (the "CIR") on July 31, 2021.

R.N. agreed the Tenant provided their forwarding address to the Landlord on the CIR and mentioned that the resident manager failed to transfer it to the electronic system or form.

The parties agreed on the following. The Landlord did not have an outstanding Monetary Order against the Tenant at the end of the tenancy. The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep a specific amount of the security or pet damage deposits. The Landlord did not apply to the RTB to keep the security or pet damage deposits.

The parties agreed they did move-in and move-out inspections together.

R.N. acknowledged that the Landlord simply made an error in relation to return of the security and pet damage deposits.

The Tenant provided documentary evidence which I don't find necessary to detail here given the testimony of the parties.

Analysis

Section 38 of the *Residential Tenancy Act* (the "Act") sets out the obligations of a landlord in relation to security and pet damage deposits held at the end of a tenancy.

Section 38(1) requires a landlord to return the security and pet damage deposits in full or claim against them within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

Given the testimony of the parties, I accept the tenancy ended July 31, 2021.

Given the testimony of the parties, I accept the Tenant provided their forwarding address to the Landlord on the CIR on July 31, 2021.

July 31, 2021 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from July 31, 2021, to repay the deposits in full or file a claim against them.

Given the testimony of the parties, I find the Landlord did not return the security or pet damage deposits or file a claim against them by August 16, 2021, the relevant date given August 15, 2021, fell on a Sunday. I find the Landlord failed to comply with section 38(1) of the *Act*.

Sections 38(2) to 38(4) of the *Act* state:

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant...

Given the testimony of the parties, I find that none of the exceptions outlined in section 38(2) to (4) apply.

Given the above, I find the Landlord failed to comply with section 38(1) of the *Act* in relation to the security and pet damage deposits and that none of the exceptions outlined in sections 38(2) to 38(4) of the *Act* apply. Therefore, the Landlord is not permitted to claim against the security or pet damage deposits and must return double the deposits to the Tenant pursuant to section 38(6) of the *Act*. The Landlord must return \$3,000.00 to the Tenant. No interest is owed on the deposits because the amount of interest owed has been 0% since 2009.

Given the Tenant was successful in the Application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to \$3,100.00 and is issued a Monetary Order in this amount.

Conclusion

The Tenant is entitled to \$3,100.00 and I issue the Tenant a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with the Order, the 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 *Act*.

Dated: April 28, 2022

Residential Tenancy Branch