



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This is an application by the tenant(s) filed under the Residential Tenancy Act (the “Act”) for a monetary order for return of the security deposit (the “Deposit”).

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Is the tenant entitled to a monetary order for return of the Deposit?

Background and Evidence

The tenancy began on or about April 1, 2019. Rent in the amount of \$1,600.00 was payable on the first of each month. A security deposit of \$800.00 was paid by the tenant. The tenant gave notice to end the tenancy effective January 31, 2020.

The tenant testified that they vacated the premises on January 25, 2020 . The tenant testified that they left their forwarding address in the landlord’s mailbox on January 25, 2020, and it was also provided by email sent on January 25, 2020, which was acknowledged received on January 26, 2020.

The landlord's agent testified that the tenant breached the fixed term tenancy because they always enter into fixed term tenancy agreements. The landlord stated they are unable to find their copy of the tenancy agreement.

The landlord's agent testified that the tenant had a balance of rent arrears at the end of the tenancy and was under a fixed term agreement.

The landlord's agent testified that the tenant did not attend the move-out condition inspection.

The tenant testified that there was no fixed term tenancy agreement. The tenant stated there was no move-in condition inspection done at the beginning of the tenancy. The tenant stated that move out condition inspection was not conducted.

Analysis

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

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

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.

(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]*.

...

- (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.

In this case, the landlord acknowledged that they did not apply for arbitration within 15 days of the tenancy ending on January 31, 2020. The landlord acknowledged that they had the tenant's forwarding address on January 26, 2020.

While the landlord alleged that there was rent arrears; however, that is not an issue for me determine at this hearing, as the landlord was required to make an application within 15 days of the tenancy ending claiming against the Deposit. The landlord acknowledged this was not done.

The landlord alleged the tenant did not attend the move-out condition inspection. However, the landlord has not proven a move-in condition inspection report was completed at the start of the tenancy and the tenant was given a copy. The landlord has not provided any evidence that a move-out condition inspection was scheduled or that they issued a Notice of Final Opportunity to Schedule a Condition Inspection. I find the landlord had over six months to file supporting evidence on this issue if such documents existed. I find the landlord has failed to prove the tenant had extinguished their rights for the return of the Deposit.

I find the landlord has breached section 38(1) of the Act.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator or proof that the tenant extinguished their rights to the return of the security deposit. The landlord has failed to prove they had the authority under the Act to keep any portion of the Deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pay the tenant the sum of **\$1,600.00**, comprised of double the Deposit (\$800.00).

The tenant is given a formal monetary order pursuant to 67 of the Act, in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court.

Conclusion

The tenant's application for return of the Deposit granted. The tenant is granted a monetary order in the above noted amount.

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 24, 2022

Residential Tenancy Branch