



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNSD, FF, O

Introduction

This Dispute Resolution hearing was convened to deal with an application by the tenant seeking the return of the double security deposit that was withheld by the landlord and the \$50.00 fee paid by the tenant for this application.

Both the landlord and tenant were present and each gave affirmed testimony in turn.

Issues to be Decided

The tenant was seeking to receive a monetary order for return of the security deposit and the issue to be determined based on the evidence was whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act. The tenant has a burden of proof to show that the deposit existed. The landlord has the burden of proof to show why the landlord had a legal right to retain the security deposit.

Preliminary Issue

A prior hearing was held on February 26, 2010 on the tenant's application in which the tenant had made a claim for the return of the security deposit. The dispute Resolution Officer found that the tenant had paid a security deposit under section 38 of the Residential Tenancy Act and was required under the Act to furnish a written forwarding address to the landlord to enable the landlord to return the deposit within 15 days or in the alternative make an application to keep it within 15 days of receiving the forwarding address. Based on the tenant's testimony that no forwarding address was provided to

the landlord because the landlord had told the tenant that the deposit would not be returned, it was found as a fact by the dispute resolution officer that the tenant had not yet served the landlord with a written forwarding address and the tenant's application was dismissed with leave to reapply.

Background and Evidence

The tenant testified that following the decision issued at the prior dispute resolution hearing, she immediately sent her written forwarding address to the landlord by registered mail on February 26, 2010. The tenant stated that after waiting for a month for a response from the landlord, she again made an application for dispute resolution on March 31, 2010 seeking the return of double the security deposit based on the landlord's failure to return the deposit as required by the Act within 15 days of being served the forwarding address.

The tenant submitted into evidence the registered mail tracking slip, the Canada Post receipt and a photo-copy of the envelope featuring the landlord's address and indicating that it was returned to sender by Canada Post as "unclaimed".

The landlord denied ever receiving the registered mail or the Canada Post notification card left at the address and testified that on this basis it must be found that the tenant's written forwarding address was never served by the tenant being that the mail was not actually retrieved by the landlord. The landlord confirmed that the mailing address was the same as that shown on the tenant's documents and envelope. The landlord stated that, after receiving the hearing package with the tenant's evidence for the hearing including the proof of registered mail sent on February 26, 2010, the landlord made inquiries to the Post Office about the not receiving the mail and called the Residential Tenancy Branch about the situation. The landlord's position was that, because the registered mail was not delivered and seen by the landlord, then the 15-day window to refund the deposit should therefore not begin until the landlord actually received the written forwarding address.

The landlord also testified that the tenancy arrangement between these two parties was not under the authority of the Act and took the position that the Dispute Resolution officer lacked jurisdiction to determine the dispute based on the nature of the tenancy. No copy of the tenancy agreement or other evidence to support the allegation was submitted into evidence.

.Analysis

In regards to the landlord's challenge regarding authority to determine the dispute, under the Act, I find that whether or not this matter was ever brought forth by the landlord at the prior hearing, the tenant's application for the security deposit and the tenancy dispute were already previously determined under the Residential Tenancy Act and had been found to be a matter under the authority of the Act. As no evidence on this particular matter was submitted by the landlord in advance of the hearing today, despite sufficient opportunity to do so, I find that the matter shall proceed under the Act.

Section 38(1) states that within 15 days of the end of the tenancy and receiving the tenant's forwarding address a landlord must either:

- repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations; OR
- make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the tenant did mail the written forwarding address to the landlord addressed to the correct address on February 26, 2010 by registered mail and that Canada Post did receive and process this registered mail.

Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served in 5 days when sent by registered mail. Pursuant to the Act, I find that the tenant's written forwarding address was served to the landlord on March 3, 2010. I find that the landlord failed to return the tenant's security deposit held in trust on

behalf of the tenant and that the landlord did not make an application to retain the deposit or portion thereof.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit.

I find that the tenant's security deposit wrongfully retained by the landlord was \$600.00 and that under the Act the tenant is entitled to a refund of \$1,200.00 which represents double the deposit.

Conclusion

Based on the testimony and evidence presented during these proceedings, I hereby grant a monetary order in favour of the tenant \$1,250.00 comprised of \$1,200.00 for double the security deposit and the \$50.00 cost of filing the application. This order must be served on the respondent and if unpaid may be enforced in Small Claims Court if necessary.

July 2010

Date of Decision

Dispute Resolution Officer