



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of his security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 9:46 a.m. in order to enable her to connect with this teleconference hearing scheduled for 9:30 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The tenant entered into written evidence a copy of the Canada Post Tracking Number and Customer Receipt to confirm that he sent the landlord a copy of his dispute resolution hearing package by registered mail on December 22, 2011. He testified that Canada Post was unable to deliver this notice to the landlord at the address that the landlord used for conducting her business as a landlord. He said that his dispute resolution hearing package was subsequently sent back to him by Canada Post when the landlord did not pick up this package from Canada Post. He testified that throughout his tenancy and following his tenancy, based on his conversation with the new tenants, mail sent to the dispute address for the landlord has been picked up by the landlord. He said that he was never given any other mailing address by the landlord. He testified that he has exchanged emails with the landlord, and he is certain that the landlord knows that he has been attempting to obtain a return of his security deposit.

On the basis of the undisputed evidence of the tenant, I am satisfied that the tenant has complied with section 88(f) of the *Act* in serving the landlord with notice of this hearing and the tenant's dispute resolution hearing package at the address that the landlord used to carry on her business as a landlord. In accordance with section 90 of the *Act*, I find that the landlord was served with the tenant's dispute resolution hearing package on December 28, 2011, the fifth open business day after its mailing.

Issues(s) to be Decided

Is the tenant entitled to obtain a return of his security deposit from the landlord? Is the tenant entitled to obtain an additional monetary award for an amount equivalent to his security deposit for the landlord's failure to comply with the terms of section 38 of the *Act*? Is the tenant entitled to recover his filing fee for this application from the landlord?

Background and Evidence

The tenant entered undisputed evidence that he commenced this fixed-term tenancy on June 13, 2011. By the time he vacated the rental unit, the tenancy had converted to a periodic tenancy. He said that the monthly rent was set at \$3,750.00, and that his occupation of the premises was on the basis of a rental agreement, a copy of which he entered into written evidence. He testified that he paid a security deposit of \$2,000.00 on June 13, 2011, and provided a copy of the cancelled cheque issued to the landlord in that amount, noting that it was for a "damage deposit."

The tenant entered written evidence that he left his forwarding mailing address for the return of his security deposit for the landlord at the dispute address on December 6, 2011. When he did not receive a return of his security deposit, he attempted to contact the landlord by telephone and by email. Although he submitted copies of his emails advising of his forwarding address as written evidence, he testified that the landlord never responded to his requests for a return of his security deposit.

Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

Based on the tenant's undisputed evidence, I find that the landlord continues to hold the tenant's security deposit of \$2,000.00 plus applicable interest from June 13, 2011 until the date of this decision. I find that the tenant is entitled to a return of his \$2,000.00 security deposit from the landlord. Over that period, no interest is payable on the landlord's retention of the security deposit.

I find that the tenant has not demonstrated that he provided his forwarding address in writing to the landlord. I find that the tenant's provision of his forwarding address to the

landlord by email in emails that were not answered or acknowledged by the landlord does not satisfy the statutory requirement that the forwarding address be provided by the tenant in writing in order to qualify for a monetary award pursuant to section 38(6) of the *Act*. Although the tenant provided written evidence that he left a copy of his forwarding address for the landlord on December 6, 2011, he did not provide this directly to the landlord and did not enter written evidence of any copy of this December 6, 2011 document. Under these circumstances, I find that the tenant is not entitled to a further monetary award of \$2,000.00 pursuant to section 38(6) of the *Act*.

As the tenant was successful in his application, I allow the tenant to recover his \$50.00 filing fee from the landlord.

Conclusion

I issue monetary Orders of \$2,050.00 in the tenant's favour which allows the tenant to obtain a return of his \$2,000.00 security deposit plus his \$50.00 filing fee from the landlord. The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders 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: March 06, 2012

Residential Tenancy Branch