



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

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

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord confirmed that she received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on January 6, 2012. I am satisfied that the tenant served this package in accordance with the *Act*.

At the hearing, the landlord testified that she has submitted a separate application for dispute resolution with respect to this tenancy. She said that her application to obtain a \$8,300.00 monetary award for unpaid rent, damage and losses arising out of this tenancy has been scheduled for dispute resolution on May 10, 2012. As these issues would appear to be separate from the current application from the tenant, I proceeded with this hearing, advising the parties that the landlord's separate application would be considered on that date.

Issues(s) to be Decided

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

Background and Evidence

This tenancy for this furnished rental unit commenced as a one-year fixed term tenancy on January 10, 2010. At the expiration of the initial term, the tenancy continued as a periodic tenancy. Monthly rent by the end of the tenancy was set at \$1,650.00, payable

in advance on the first of each month. The landlord continues to hold a \$1,650.00 security deposit, paid on January 10, 2010.

The tenant testified that she gave her oral notice to end this tenancy by the end of December 2011 on December 6, 2011. She said that on December 7, 2011 she gave the landlord written notice to end her tenancy by placing that notice under the landlord's door. The landlord confirmed that she received the tenant's written notice on December 8, 2011. The parties agreed that the tenant paid her full rent for December 2012.

The tenant testified that she ended her tenancy, vacated the rental unit and left her keys and her forwarding address in writing with the basement tenant of this property on December 15, 2011. She said that she tried to provide the keys and her forwarding address directly with the landlord but the landlord was unavailable when she vacated the rental unit. She testified that the basement tenant told her that the basement tenant left the keys and the forwarding address with the landlord when the landlord returned early in January 2012.

The landlord testified that she was out of town until early in January 2012. She said that when she returned she realized that the tenant had vacated the rental unit. She denied having received the tenant's keys or forwarding address in writing from the basement tenant or anyone else. She said that she did not receive the tenant's forwarding address until she received the tenant's dispute resolution hearing package for this hearing. The landlord testified that the tenant provided her written agreement to let the landlord retain her security deposit as compensation for the tenant's failure to provide adequate notice regarding her end to this tenancy. Although the landlord said that her husband had this written agreement, she did not enter this agreement into written evidence. The tenant denied having given her written agreement to allow the landlord to retain her security deposit.

On January 4, 2012, the tenant applied for a return of double her security deposit because the landlord failed to return her security deposit within 15 days of the tenant's provision of her forwarding address in writing to the landlord.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord is required to pay a monetary award equivalent to the value of the security

deposit pursuant to section 38(6) of the *Act*. 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. With respect to the return of the security deposit, the triggering event is the latter of the provision by the tenant of the forwarding address in writing or the end of the tenancy.

In this case, I am satisfied that the landlord has not applied for dispute resolution to obtain authorization to retain the tenant's security deposit nor has the landlord returned the tenant's security deposit in full. The landlord did not enter into written evidence a copy of the alleged written agreement that she maintained the tenant signed granting the landlord written authorization to retain her security deposit. As the landlord could have entered into written evidence any written agreement she might have obtained in response to the tenant's application to obtain a return of the security deposit, I find on a balance of probabilities that the landlord has not demonstrated that she had a written agreement enabling her to retain the tenant's security deposit. For these reasons, I find that the tenant is entitled to obtain a return of her \$1,650.00 security deposit plus applicable interest. No interest is payable over this period.

The tenant testified that she did not give her forwarding address in writing directly to the landlord. She did not enter into written evidence a copy of the written notice that she gave the basement tenant for forwarding to the landlord. The tenant did not enter into written evidence a signed statement from the basement tenant confirming that she received the tenant's forwarding address from the tenant on December 15, 2011, or that the basement tenant gave that notice to the landlord. The basement tenant did not participate in this hearing to give sworn testimony to confirm the tenant's claim regarding the delivery of the forwarding address in writing to the landlord. For these reasons, I find that the tenant has not demonstrated to the extent necessary that she provided her forwarding address in writing to the landlord by way of the basement tenant in this rental property.

I have also considered whether the tenant's provision of her mailing address on her application for dispute resolution constituted provision of her forwarding address in writing for the purposes of section 38 of the *Act*. The landlord acknowledged receiving a copy of the tenant's dispute resolution hearing package sent by registered mail on January 6, 2012, a package which included the tenant's forwarding address. The landlord explained that she only received this package a few days after she returned from holidays. Although the landlord realized by then that the tenant was seeking a return of double her security deposit, the landlord did not believe at that time that the tenant was providing her with her forwarding address in writing so as to enable the landlord to avoid paying the penalty set out in section 38(6) of the *Act*. By then, the

landlord said that she thought that this matter was out of her hands as the tenant had applied for dispute resolution.

I do not accept that the landlord was powerless to return the tenant's security deposit or apply for dispute resolution herself after receiving the tenant's dispute resolution hearing package. However, I also do not find that the tenant's provision of her forwarding address in her dispute resolution hearing package sent to the landlord on January 6, 2012 met the requirements of section 38 of the *Act* with respect to the tenant's provision of her mailing address in writing to the landlord. The purpose of the application for dispute resolution and the requirement to provide a copy of that application to the respondent relates to the service of the application for dispute resolution and not to the subject matter of that application. The inclusion of the tenant's mailing address on an application submitted to the Residential Tenancy Branch does not equate to the tenant's direct provision of her forwarding address in writing to the landlord. For these reasons, I find that the landlord was not required to take action regarding the tenant's security deposit within 15 days of receiving the tenant's forwarding address by way of the tenant's application for dispute resolution.

For the above-stated reasons, I find that the tenant has not provided her forwarding address in writing to the landlord for the purposes of obtaining a return of her security deposit. As such, the triggering event for the tenant's eligibility for a payment under section 38(6) of the *Act* has not been met. Consequently, I dismiss the tenant's application for a monetary award equivalent to the amount of her security deposit. I do not accept the tenant's assertion that the landlord's failure to comply with section 38 of the *Act* entitles her to a monetary award pursuant to section 38(6) of the *Act*.

As the tenant was partially successful in this application, I find that the tenant is entitled to recover the \$50.00 filing fee paid for this application from the landlord.

Conclusion

I issue a monetary Order of \$1,700.00 in the tenant's favour which enables the tenant to obtain a return of her \$1,650.00 security deposit and the \$50.00 filing fee she paid for this application. 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.

I dismiss the tenant's application for a monetary award equivalent to the amount of her security deposit for the alleged failure of the landlord to comply with the provisions of section 38 of the *Act* without leave to reapply.

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 09, 2012

Residential Tenancy Branch