



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application pursuant to section 38 of the *Residential Tenancy Act* (the *Act*) for authorization to obtain a return of double her security deposit for the landlord's alleged failure to comply with the terms of section 38 of the *Act*.

The landlord did not attend this hearing, although I waited until 3:13 p.m. in order to enable him to connect with this teleconference hearing scheduled for 3:00 p.m. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. She testified that she sent the landlord a copy of her dispute resolution hearing package by registered mail on July 6, 2012. She provided the Canada Post Tracking Number to confirm this mailing. I am satisfied that the tenant served this package to the landlord in accordance with the *Act*.

At the hearing, the tenant requested authorization to amend her application for a monetary award of \$1,530.00 to \$1,570.00, double the value of her security deposit. She said that she had made a mathematical mistake in her original application. I agreed to the amended amount as requested.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of her security deposit? Is the tenant entitled to a monetary award equivalent to the amount of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Background and Evidence

The tenant testified that her tenancy was supposed to commence on March 1, 2012. She testified that monthly rent for this tenancy was to be \$785.00, payable in advance on the first of each month. She said that the landlord received her bank money order for \$1,570.00, paid on February 28, 2012. She entered into written evidence a copy of that bank money order. She said that this payment was for her first month's rent and for the \$785.00 security deposit the landlord had required as a condition of renting the premises to her. She said that she subsequently learned that the maximum security deposit a landlord can require in this province is an amount equivalent to one-half month's rent.

The tenant testified that once she and her family arrived at the rental property from their former residence in another province, they discovered that the premises were not as advertised. She and her family did not take occupancy of the rental unit.

The tenant entered into written evidence a copy of an April 26, 2012 registered letter in which she provided her forwarding address to the landlord along with a request to return her security deposit in full. She provided copies of the Canada Post Tracking Number, Customer Receipt and an on-line Canada Post Tracking History which confirmed that her registered letter sent on April 26, 2012 was successfully delivered on April 30, 2012.

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 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 must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "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."

In this case, the evidence is that the tenant provided her forwarding address in writing by registered mail. In accordance with section 90 of the *Act*, the tenant's service of her forwarding address to the landlord by registered mail on April 26, 2012 is deemed to have occurred on the fifth day after mailing, in this case on May 1, 2012. Within 15 days of May 1, 2012, the landlord did not return the tenant's security deposit in full and did not apply for dispute resolution to retain that deposit. There is no evidence that the tenant gave her written authorization to retain any portion of her security deposit. As such, I find that the tenant is therefore entitled to a monetary order amounting to double the value of her original security deposit with interest calculated on the original amount only. No interest is payable over this period.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$1,570.00 which allows the tenant to recover her security deposit and to obtain a monetary award equivalent to the value of her security deposit for the landlord's failure to comply with section 38 of the *Act*. 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: September 12, 2012

Residential Tenancy Branch