



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 all her security deposit. The landlord did not attend this hearing, although I waited until 1:42 p.m. in order to enable him to connect with this teleconference hearing scheduled for 1:30 p.m. The tenant's agent (the agent) attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The agent testified that the tenant sent the landlord a copy of her dispute resolution hearing package by registered mail to the last mailing address he provided to her on October 10, 2012. The agent provided the Canada Post Tracking Number to confirm this registered mailing. He said that the tenant's registered mail package was returned to her by Canada Post as unclaimed. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's dispute resolution hearing package on October 15, 2012, the fifth day after its mailing.

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 agent testified that this periodic tenancy commenced on February 15, 2012. Monthly rent was set at \$550.00, payable in advance on the first of the month. The agent testified that the landlord continues to hold all of the tenant's \$250.00 security deposit paid through the Ministry of Social Development shortly before the tenant took occupancy of the premises.

The agent testified that the tenant vacated the rental unit by August 15, 2012, by which time she surrendered her keys to the landlord's representative(s). The agent testified that the tenant provided the landlord with her forwarding address in writing by way of a September 13, 2012 letter. The tenant entered into written evidence a copy of that

letter and maintained that the landlord failed to meet with her to return her security deposit at the time and place they had arranged when she spoke with him.

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 security 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 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, I find that the triggering event was the date when the landlord was deemed to have received the tenant's forwarding address in writing. This occurred by September 18, 2012, the fifth day after the letter was mailed to the landlord.

I find that the landlord has not returned the security deposit within 15 days of his deemed receipt of the tenant's forwarding address. The tenant is therefore entitled to a monetary order amounting to double the 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 under the following terms which allows the tenant to recover her original security deposit plus an equivalent monetary award arising out of the landlord's failure to return her security deposit in accordance with section 38 of the *Act*.

Item	Amount
Return of Security Deposit	\$250.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	250.00
Total Monetary Order	\$500.00

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: January 02, 2013

Residential Tenancy Branch

