



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 of the security deposit for this tenancy pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 11:10 a.m. in order to enable her to connect with this teleconference hearing scheduled for 11:00 a.m. The tenants' representative (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 the tenant's dispute resolution hearing package by registered mail on November 19, 2012. She provided a copy of the Canada Post Customer Receipt and Tracking Number for this registered mailing. Canada Post's on-line tracking system revealed that the tenant's dispute resolution hearing package was successfully delivered to the landlord on November 27, 2012, at which time the landlord signed for receipt of the package. I am satisfied that the tenant served the hearing package to the landlord in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of the security deposit for this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant provided a copy of a rental agreement signed by the landlord in which the tenant sublet the landlord's rental unit for the period from August 2, 2012 until August 26, 2012 for a total of \$2,565.00. As part of this rental agreement, the tenant agreed to pay the landlord a \$1,200.00 security deposit. The tenant provided oral and written

evidence to confirm that the tenant paid the security deposit to the landlord on July 27, 2012.

The tenant testified that after the premises were vacated by August 26, 2012, she began sending a series of four emails requesting that the landlord return the security deposit. She entered into written evidence copies of these emails, the first of which was sent on September 13, 2012. She testified that she also attempted to contact the landlord by phone. She said that she has received no response from the landlord to any of her requests for the return of the security deposit. The tenant applied for a monetary award of \$1,200.00, plus the recovery of the \$50.00 filing fee.

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 in writing. 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, I find that the tenant's emails and phone messages may or may not have been received by the landlord. I find that the tenant has not sent a copy of the tenant's forwarding address in writing as required by the *Act* in order to qualify for a monetary award doubling of the tenant's security deposit. However, there is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. Similarly, the landlord has not provided any evidence that the landlord obtained the tenant's written authorization to retain any portion of the tenant's security deposit.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a return of the original \$1,200.00 security deposit for this tenancy plus applicable interest. No interest is payable over this period.

As the tenant has been successful in this application, I find that the tenant is also entitled to recover the \$50.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$1,250.00, an amount that allows the tenant to recover the \$1,200.00 security deposit plus the \$50.00 filing fee for this application. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order 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: February 21, 2013

Residential Tenancy Branch

