



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 monetary award equivalent to the amount of his security deposit as a result of the landlord's failure to comply with the provisions of 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 11:15 a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 11:00 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 testified that he served the landlord with his dispute resolution hearing package by registered mail on April 12, 2013. He entered into written evidence a copy of the Canada Post Tracking Number to confirm this registered mailing. He said that he believed the hearing package was received by the landlord because it was not returned to him.

I noted that the tenant had identified the wrong province in the mailing address for the landlord in the tenant's application for dispute resolution. The tenant gave sworn testimony that he sent the dispute resolution hearing package and written evidence to the landlord's correct mailing address in Toronto, Ontario and not Toronto, B.C. as was identified on the tenant's application for dispute resolution. In accordance with the powers delegated to me under the *Act*, I have corrected the landlord's mailing address to reflect that Toronto is in fact in Ontario and not B.C.

To ensure that the tenant's hearing package was sent to the correct province, I checked the Canada Post Online Tracking System to confirm the accuracy of the tenant's sworn testimony. The Canada Post Tracking System confirmed that the tenant's registered mailing was signed for and received by the landlord on April 15, 2013, three days after its mailing by the tenant. I am satisfied that the tenant served his dispute resolution

hearing package also containing his written evidence to the landlord in accordance with the *Act*.

Issues(s) to be Decided

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

Background and Evidence

This periodic tenancy commenced on July 1, 2010. Monthly rent at the beginning of the tenancy was set at \$1,020.00, payable in advance on the first of each month. The tenant paid a \$510.00 security deposit on or about June 24, 2010.

The tenant entered into written evidence a copy of an October 31, 2012 note that he handed to the landlord's on-site manager. This note advised the landlord of the tenant's intention to vacate the rental unit by November 30, 2012. It also contained the tenant's forwarding address, which has remained the same since the tenant vacated the rental unit on November 30, 2012. The tenant testified that the joint move-out condition inspection was uneventful and the landlord's on-site manager advised him that he would be receiving a full return of his security deposit from the landlord.

The tenant provided written evidence and sworn testimony that he called the landlord's building manager and property managers many times over the next 45 days. He stated that he was told that his file was "lost in accounting but that I would be receiving double the damage deposit as it had not been returned within the 15 days" required by the *Act*. The tenant provided sworn testimony and written evidence that he received a \$510.00 return of his original security deposit 53 days after the end of his tenancy. He entered into written evidence a copy of the landlord's cheque dated January 10, 2013. He testified that he did not receive this cheque until January 23, 2013.

The tenant applied for a monetary award of \$560.00. This amount included a request for a monetary award equivalent to the original amount of his security deposit, \$510.00, due to the landlord's failure to comply with the requirement under section 38 of the *Act* to return his security deposit within 15 days of the end of his tenancy. The tenant also requested the recovery of his filing fee for this application.

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 security 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 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 tenant provided his forwarding address in writing well before the end of his tenancy. Thus, the 15-day period for returning the tenant's security deposit commenced on November 30, 2012, the last day of his tenancy.

I find that the landlord did not return the tenant's security deposit in full within 15 days of the end of this tenancy. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The tenant gave undisputed sworn testimony that the landlord has not obtained her written authorization at the end of the tenancy to retain any portion of the tenant's security deposit.

While the landlord did eventually return the tenant's security deposit in full, there is undisputed evidence that the landlord did so, well after the 15-day time limit established in section 38 of the *Act* had expired. In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary award equal to the amount of his original security deposit due to the landlord's failure to comply with the provisions of section 38 of the *Act*. This results in a \$510.00 monetary award. No interest is payable for this item. Since the tenant has been successful in his application, I also allow the tenant to recover his \$50.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$560.00, which allows the tenant a monetary award for the landlord's failure to comply with section 38 of the *Act* and to recover his filing fee. 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: July 04, 2013

Residential Tenancy Branch

