



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The tenant applied for the return of double his security deposit, plus the recovery of his filing fee.

The tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the tenant presented his evidence. A summary of the tenant's testimony is provided below and includes only that which is relevant to the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice") was considered. The tenant testified under oath that the Notice and evidence was served on the landlord by registered mail on July 12, 2013 and was addressed to the landlord's address provided by the landlord to the tenant. The tenant provided a registered mail tracking number in evidence prior to the hearing. The tenant testified that the landlord did not accept the registered mail package as it was returned to the tenant. The tenant submitted a document in evidence which supports that the mailing address for the landlord was correct. The document submitted in evidence indicates the tenant's online banking information and indicates the address of the landlord and indicates a payment from the tenant for the security deposit and key deposit in the tenant's name in the amount of \$385.00, which the tenant stated was comprised of a \$310.00 security deposit, and a \$75.00 key deposit. Based on the above, I find the landlord was sufficiently served in accordance with the *Act*.

Issue to be Decided

- Is the tenant entitled to the return of double his security deposit under the *Act*?

Background and Evidence

The tenant testified that a verbal month to month tenancy agreement began on May 1, 2013. The tenant stated that monthly rent in the amount of \$620.00 was due on the first day of each month. A security deposit of \$310.00 was paid to the landlord, plus a \$75.00 key deposit for a total deposit of \$385.00. The tenant submitted in evidence a signed document dated May 1, 2013 from the landlord indicating that the tenant paid the landlord the amount of \$620.00 for May 2013 rent, and acknowledges that he already received the tenant's \$310.00 security deposit and \$75.00 key deposit as of May 1, 2013.

The tenant stated that he vacated the rental unit on June 1, 2013 after giving notice in early May 2013. The tenant testified that the only amount of money received from the landlord to date was \$80.00 in cash received on June 1, 2013 which covered the entire key deposit of \$75.00 plus \$5.00 of the security deposit. The tenant confirmed that he has not received any further money from the landlord since June 1, 2013. The tenant stated that he did not give the landlord permission to retain any amount of his security deposit.

The tenant testified that he provided his written forwarding address to the landlord on June 17, 2013 and hand delivered it to the landlord on that date. In the tenant's application, the tenant is seeking double his remaining security deposit of \$305.00 which after it is doubled would total \$610.00. The tenant stated that he is also seeking the recovery of his filing fee.

I have reviewed all oral and documentary evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Tenant's claim for the return of double the security deposit – I accept the tenant's undisputed testimony that the tenancy ended on June 1, 2013 when the tenant vacated the rental unit. Section 38 of the *Act* applies which states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[emphasis added]

In the matter before me, I accept the tenant's undisputed testimony that the tenant provided his written forwarding address to the landlord on June 17, 2013. I also accept that the tenant received \$80.00 in cash from the landlord on June 1, 2013 which is the full amount of the \$75.00 key deposit plus \$5.00 of the security deposit. I accept the tenant's undisputed testimony that the security deposit balance was \$305.00 after deducting the money paid by the landlord on June 1, 2013. The landlord has not submitted an application claiming towards the tenant's security deposit. Furthermore, the landlord did not have permission from the tenant to deduct any amount from the security deposit of the tenant.

Given the above, and pursuant to section 38 of the *Act*, the landlord had to either return the full security deposit to the tenant or file an application to claim towards the security deposit within 15 days of receiving the tenant's forwarding address in writing, which in the matter before me was provided to the landlord on June 17, 2013. Based on the above, **I find** the landlord breached section 38 of the *Act* by failing to return the security deposit in full to the tenant within 15 days of receiving the forwarding address of the tenant in writing on June 17, 2013 having not made a claim towards the security

deposit. Therefore, **I find** the tenant is entitled to the return of double the balance of the security deposit which was \$305.00 for a total of **\$610.00**. I note that the security deposit has accrued \$0.00 in interest since the start of the tenancy.

As the tenant was successful with his application, **I grant** the tenant the recovery of his filing fee in the amount of **\$50.00**.

Monetary Order – I find that the tenant has established a total monetary claim in the amount of **\$660.00**, comprised of \$610.00 for double the security deposit balance, and the \$50.00 filing fee. **I grant** the tenant a monetary order pursuant to section 67 of the *Act* in the amount of **\$660.00**. The tenant must serve this order on the landlord and this order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I grant the tenant a monetary order pursuant to section 67 of the *Act* in the amount of \$660.00. The tenant must serve this order on the landlord and this order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: October 09, 2013

Residential Tenancy Branch

