



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

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to ask relevant questions of one another. The landlord's agent (the agent), who co-signed as one of the landlords in the Residential Tenancy Agreement between the parties, testified that she was authorized to act for the Respondent landlord, her son, in this matter. She produced a letter to that effect, signed by the landlord. The agent testified that the tenant's application for dispute resolution was received by her and the Respondent, by registered mail. The tenant entered into written evidence a copy of the Canada Post Tracking Number to confirm that he sent the Respondent a copy of the dispute resolution hearing package by registered mail on August 23, 2013. The agent also testified that she had no reason to dispute the tenant's claim that the tenant's written evidence was also provided to the Respondent by registered mail. Based on the testimony of the parties and the tenant's written evidence and in accordance with section 89(1) and 90 of the *Act*, I find that the Respondent was deemed served with the tenant's dispute resolution hearing package on August 28, 2013, five days after its registered mailing.

Preliminary Issue – Landlord's Request for a Monetary Order

At the commencement of the hearing, the agent asked for consideration of what she considered to have been a properly executed application for dispute resolution for the issuance of a monetary Order against the Applicant/tenant. She entered into written evidence a copy of her son's August 30, 2013 authorization to allow the agent to represent her in this matter, which included a request "to join" the tenant's application as the respondent in the existing file.

While the agent contacted the Residential Tenancy Branch (the RTB) to “join” this application, neither the agent nor her son actually submitted their own application for dispute resolution to seek the monetary award that they requested in the Monetary Order Worksheet the agent signed on September 25, 2013, and submitted to the RTB. Without an actual application for dispute resolution which would have created a separate RTB File number and Notice of a Dispute Resolution Hearing, the tenant would be unaware that the landlord had applied for the issuance of a monetary Order. The process of “joining” an existing application for the purposes of a hearing is one which is dependent on an actual application having been filed by a Respondent. Once the RTB receives a second application for dispute resolution from a Respondent in a hearing already scheduled, then and only then can the two applications be “joined” into one hearing.

I accept that the agent genuinely believed that she had taken the necessary measures to have a separate application for dispute resolution considered at this hearing. However, a fundamental foundation of the principles of natural justice allows a respondent an opportunity to know the case against him or her and to be afforded a proper opportunity to prepare for and respond to that case. In this case, no application for dispute resolution has been initiated by the landlord nor his agent and, as a result, no Notice of a Dispute Resolution Hearing has been created whereby the landlord or his agent could formally notify the tenant of the landlord’s separate application for dispute resolution. Under these circumstances, I advised the agent of my decision that no application for dispute resolution from the landlord was before me. I advised her that the landlord or his agent remains at liberty to apply for dispute resolution to seek a monetary award for damage, loss or unpaid rent, within the time frames established under the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of double 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

While I have turned my mind to all the documentary evidence, including miscellaneous letters, documents and affidavits, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal and relevant aspects of the tenant’s claim for the return of double his security deposit and my findings are set out below.

The tenant, the landlord and the agent/co-landlord signed a one-year fixed term Residential Tenancy Agreement (the Agreement) on April 28, 2012. This Agreement was to cover the period from April 30, 2012 until April 30, 2013. Monthly rent for this furnished rental unit in a strata property was set at \$2,000.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$2,000.00 security deposit paid on April 30, 2012. The tenant correctly noted in his written evidence that the *Act* prevents a landlord from requiring any more than one-half of the monthly rent as a security deposit. The agent was incorrect in her claim that the *Act* allowed a landlord to charge more for a security deposit if the rental is for a furnished unit.

The tenant claimed that the landlord took action to prematurely and illegally prevent the tenant from accessing the rental unit on or about April 28, 2013. The agent testified that the tenant abandoned the rental unit and that the tenant's wife illegally seized the landlord's furnishings as a way of attempting to obtain a return of the tenant's security deposit.

The tenant testified that the tenant's forwarding address was handed to the landlord in writing on May 5, 2013, in the attendance of an RCMP Officer. The agent confirmed that the tenant handed the forwarding address to the landlord(s) in the company of an RCMP Officer, but the agent said that this happened on May 1 or May 2, 2013. At any rate, the agent confirmed that the tenant's security deposit of \$2,000.00 has not been returned to the tenant. The agent maintained that the *Act* allowed the landlord to retain this deposit because the tenant had abandoned the rental unit.

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 agent confirmed that the tenant handed the landlord(s) the forwarding address on May 1 or 2, 2013. The tenant entered written evidence that this happened

on May 5, 2013. Both parties agreed that the tenancy had ended by the time that the forwarding address had been given to the landlord(s). The agent confirmed that the tenant has not given his written authorization to allow the landlord to keep any portion of the security deposit.

I find that the landlord has not returned the security deposit within 15 days of receipt of the tenant's forwarding address. The tenant testified that he has not agreed to forego the imposition of the provisions of section 38(6) of the *Act* allowing him to obtain a return of double his security deposit. The tenant is therefore entitled to a monetary order amounting to double the value of his original security deposit with interest calculated on the original amount only. No interest is payable over this period.

As the tenant has been successful in this application, I allow him to recover his \$50.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms, which allows the tenant to obtain a monetary award of double his security deposit and the recovery of his filing fee:

Item	Amount
Monetary Award of Double Tenant's Security Deposit for Landlord's Failure to Comply with s. 38 of the <i>Act</i> (\$2,000 x 2 = \$4,000)	\$4,000.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$4,050.00

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: November 29, 2013

Residential Tenancy Branch