



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD OLC FF

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "*Act*"). The tenant applied for a monetary order for the return of his security deposit, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, plus the recovery of his filing fee.

The tenant attending the hearing and gave affirmed testimony, was provided the opportunity to present his evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

As the landlord did not attend the teleconference hearing, service of the Notice of Dispute Resolution Hearing (the "Notice of Hearing") was considered. The tenant testified that the landlord was served with Notice of the Hearing and evidence via two registered mail packages on August 22, 2013. The tenant testified that the first package was addressed to the landlord's service address as listed on the written tenancy agreement submitted in evidence. The second package, according to the tenant, was addressed to the landlord's physical mailing address. Two registered mail tracking numbers were submitted in evidence in support of the tenant's testimony. The tenant stated that when he tracked both packages online via the online registered mail postal tracking website, the packages were shown as "unclaimed" by the landlord.

Documents served by registered mail are deemed served five days after the date the documents are mailed pursuant to section 90 of the *Act*. Based on the above, the undisputed testimony of the tenant, and the documentary evidence, I find the landlord was deemed served as of August 27, 2013, which is five days after August 22, 2013, the date the registered mail packages were mailed to the landlord. I note that refusal or neglect on the part of the landlord to accept or receive registered mail does not constitute grounds for an Application for Review Consideration under the *Act*.

Preliminary and Procedural Matter

The tenant's request to have the landlord directed to comply with the *Act* was dismissed as the tenant did not specify in his application which section of the *Act*, regulation or tenancy agreement he was disputing in the "details of dispute" portion of his Application.

Issue to be Decided

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

Background and Evidence

A copy of the written tenancy agreement was submitted in evidence. The fixed term tenancy began on August 1, 2012 and ended on July 31, 2013. I note that there was an obvious typographical error in the written tenancy agreement as the year of the end of the fixed term was typed as "2012" when it obviously must have been "2013" as the tenancy agreement start date is listed as August 1, 2012.

The tenant stated that monthly rent in the amount of \$1,900.00 was due on the first day of each month and did not include electricity as part of the monthly rent. The tenant paid a security deposit of \$950.00 at the start of the tenancy, which the tenant stated the landlord continues to hold and has not returned.

The tenant stated that the landlord did not complete an incoming condition inspection report at the start of the tenancy; however, an outgoing condition inspection report was completed on July 31, 2013. The tenant testified that the landlord wrote the tenant's written forwarding address on the outgoing condition inspection report dated July 31, 2013. The tenant stated that he also sent his written forwarding address to the landlord by e-mail on August 15, 2013, and that the landlord responded to that e-mail on August 16, 2013. Copies of that e-mail and other e-mails were submitted in evidence.

The tenant stated that he is waiving his right to double his security deposit under the *Act*, and is also willing to have \$217.94 deducted from his security deposit, as that was the amount of the unpaid electricity that he owes the landlord. As a result, the tenant is seeking recovery his security deposit of \$950.00 less \$217.94 for electricity that he owes the landlord, plus the \$50.00 filing fee for a total of \$782.06 after deductions indicated above.

Analysis

Based on the above, the undisputed testimony of the tenant and the documentary evidence, and on a balance of probabilities, I find the following.

Section 38 of the *Act* 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]

Based on the above, **I find** that the landlord has breached of section 38 of the *Act*. There was no evidence before me to support that the landlord has applied towards the tenant's security deposit within 15 days of August 16, 2013, the date that I find the landlord was aware of the tenant's written forwarding address, which was the date the landlord responded to the tenant's August 15, 2013 e-mail, after the tenant wrote to landlord with his forwarding address.

The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an Arbitrator, or the written agreement of the tenant. In the matter before me, **I find** the landlord did not have any authority under the *Act* to keep any portion of the security deposit and did not return the security deposit to the tenant within 15 days in accordance with the *Act*.

Section 38(6) of the *Act* provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue unless the tenant waives their right to double the security deposit under the *Act*, which the tenant requested to do during the hearing. In addition, the tenant stated that he has agreed to a deduction from his security deposit in the amount of \$217.94 for unpaid electricity which the tenant owes the landlord. As a result of above, **I find** the tenant is entitled to the return of his \$950.00 security deposit, plus the \$50.00 filing fee as the tenant's application had merit, less \$217.94 as indicated by the tenant for unpaid electricity owed to the landlord by the tenant. Therefore, **I grant** the tenant a monetary order pursuant to section 67 of the *Act* in the amount of **\$782.06**.

Conclusion

The tenant has established a total monetary claim of \$782.06 comprised of the return of his security deposit of \$950.00, plus the \$50.00 filing fee, less \$217.94 that the tenant confirms he owes the landlord for unpaid electricity. The tenant has been granted a monetary order under section 67 in the amount of \$782.06. This order must be served on the landlord and 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: December 16, 2013

Residential Tenancy Branch

