



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

The landlord did not attend this hearing, although I waited until 9:48 a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 9:30 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. The tenant testified that she sent the landlord a copy of her dispute resolution hearing package by registered mail on August 26, 2013. She provided the Canada Post Tracking Number to confirm this registered mailing. She testified that this package was returned to her by Canada Post as unclaimed. The tenant said that she also took a copy of her dispute resolution hearing package to the landlord's home on November 18, 2013. When no one answered the door at the landlord's home, the tenant gave sworn testimony that she placed the hearing package in the landlord's mailbox, taking a photograph of herself taking this action. In accordance with sections 89(1) and 90 of the *Act*, I find that the landlord was deemed served with the tenant's dispute resolution hearing package, including notice of this hearing, on August 31, 2013, the fifth day after its registered mailing.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of a portion of her security deposit? Is the tenant entitled to a monetary award equivalent to the amount of her 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

The tenant testified that she entered into an oral agreement for this rental unit and paid \$850.00 in cash as a security deposit to the landlord on July 27, 2013. She gave sworn

testimony that the landlord gave her a receipt for this payment. She testified that this was to have been a one-year fixed term tenancy commencing on August 1, 2013, in which monthly rent was to have been \$1,700.00, payable on the first of each month. The tenant identified a number of items that were broken and needed repair before she could take possession. She said that at the time she agreed to rent the premises, the landlord told her that she would repair the premises and clean up the rental unit. When the tenant returned to the rental unit on July 28, 2013, and after the landlord had received her cash security deposit, the landlord refused to undertake the requested repairs. The tenant said that under these circumstances she would not move into the rental unit and told the landlord that she would not be taking occupancy of the rental unit as she considered the landlord to have not honoured her oral agreement. The landlord refused the tenant's request to return her security deposit. No written tenancy agreement was signed and the tenant did not move into the rental unit.

The tenant testified that she sent the landlord a written request to return her security deposit along with her forwarding address by registered mail on August 6, 2013. She provided the Canada Post Tracking Number for this registered mailing. She said that she discovered that the landlord had left the country for three months and the person the landlord had assigned to look after the property for her did not have the necessary identification to obtain this registered mailing. The tenant's registered letter was returned to her by Canada Post.

The tenant applied for a monetary award of \$850.00, the amount of her security deposit, plus the recovery of her filing fee. She testified that she had never waived her right to claim against this deposit or to claim for any additional payments owing as a result of the landlord's failure to return her security deposit. She testified that the landlord has not applied for dispute resolution with respect to this tenancy.

Analysis

No written tenancy agreement was created for this tenancy. However, the *Act* considers this tenancy to have commenced on the date that the parties entered into their oral agreement, confirmed by the tenant's sworn testimony that she paid an \$850.00 security deposit on July 27, 2013. Even though the tenant did not move into the rental unit on August 1, 2013, as per the terms of the oral tenancy agreement, the obligations of both parties commenced by at least July 27, 2013, when the security deposit was paid to the landlord.

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 tenant gave undisputed sworn testimony, supported by a valid Canada Post Tracking Number, to indicate that she sent the landlord her forwarding address in writing by registered mail on August 6, 2013. In accordance with sections 38, 88 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's forwarding address in writing on August 11, 2013, the fifth day after its registered mailing.

I find that the landlord has not returned the security deposit within 15 days of receipt of the tenant's forwarding address in writing as required by the *Act*, nor has the landlord applied for authorization to retain the tenant's security deposit. I also find that the tenant has not waived her right to obtain double the value of her security deposit. In accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the value of her security deposit with interest calculated on the original amount only. No interest is payable over this period.

Having been successful in this application, I find further that the tenant is entitled recover the \$50.00 filing fee paid for this application 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 Order for double the value of her security deposit and her filing fee:

Item	Amount
Return of Security Deposit	\$850.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	850.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,750.00

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: December 02, 2013

Residential Tenancy Branch

