



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application pursuant to section 38 of the *Residential Tenancy Act* (the "Act") for authorization to obtain a return of his security deposit.

Both the landlord and tenant attended the hearing by teleconference. They were each given a full opportunity to be heard, to present evidence and to make submissions.

The tenant testified that he provided the landlord with the dispute resolution package by handing it to him personally. The landlord did not dispute this evidence. I am satisfied that the tenant served copies of this dispute resolution hearing package to the landlord in accordance with the Act.

The landlord filed evidence with the Residential Tenancy Branch on 21 October 2014 and 24 October 2014. This evidence largely relates to a yet unfiled claim for damages by the landlord and, as such, is irrelevant to this application. The landlord did not provide details as to when or how he served this evidence to the tenant. Tenant testified that he did not receive this evidence.

A party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case. Since the landlord has not demonstrated that he served this evidence to the tenant, there would be a denial of the fundamental right to natural justice if I were to consider evidence not provided to one of the parties. It would prejudice the tenant to admit evidence that he has not had the opportunity to review. For these reasons, I advised the parties that I would not be taking the landlord's written evidence into consideration in reaching my decision.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for double his security deposit pursuant to section 38 of the Act?

Background and Evidence

While I have turned my mind to all the documentary evidence, including miscellaneous letters, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

This dispute arises in respect of a tenancy agreement that began 2 August 2013 and ended on or about 4 October 2013.

It is undisputed that the landlord collected a security deposit of \$300.00 at the beginning of the tenancy. Both the tenant and landlord testified to this and I was provided with a handwritten receipt that shows the same.

The tenant and landlord provided conflicting evidence as to whether the security deposit had been returned. The tenant was adamant that it had not been returned to date. The tenant stated that in a prior hearing an arbitrator had declined his request for a return of this security deposit on the basis that the tenant had not yet provided written notice to the landlord of his forwarding address. The tenant testified that he provided written notice and filed this application as a result of the prior decision. The prior decision does not make any determination as to the facts surrounding this application; merely that the tenant was premature in making the prior application.

The landlord testified that he had repaid the tenant his security deposit: in fact, he provided testimony of two different accounts of when and how this occurred. In the first account, the landlord testified that he returned the security deposit to the tenant on 3 August 2013 when the tenant said that he needed the money for food. The landlord testified that both he and the tenant went to the bank to withdraw the security deposit paid by a third party so that the landlord could give it to the tenant. In the second scenario, the landlord testified that the payment was returned to the tenant as part of a \$700.00 settlement agreement reached at the end of the tenancy, which concluded when the landlord changed the locks on the rental unit. I was not provided with admissible evidence as to the terms of this agreement.

The tenant testified that he did not receive a return of the security deposit on either 3 August 2013 or as part of any payment from the landlord at the conclusion of the tenancy.

The tenant testified that on 2 May 2014 he delivered written notification of his forwarding address to the landlord. His written evidence indicates that he delivered the written notification to a roommate of the landlord. The tenant has provided a witness statement that sets out the same. In the course of the hearing, the tenant expressed some uncertainty about this delivery and thought that the written notification may have been posted on the landlord's bedroom door after he was admitted into the landlord's home by the roommate. The landlord did not dispute the tenant's assertion that the tenant had provided his forwarding address to the landlord on or about 2 May 2014. I do not find the difference in the tenant's evidence troubling and accept that he served the written notification properly on the landlord pursuant to section 88 of the Act.

The landlord testified that the tenant's conduct over the course of the tenancy had caused him various losses. I alerted the landlord at the hearing that the only matter properly before me was the tenant's claim for the return of his security deposit.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit. However, pursuant to paragraph 38(4)(a) of the Act, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

In this case, I find that the landlord has not returned the tenant's security deposit in full within 15 days of receipt of the tenant's forwarding address in writing. I find the landlord's testimony was inconsistent: he did not provide me with any reason why he would pay the tenant back twice. I find it improbable that the landlord would return the security deposit to the tenant shortly after the tenancy had begun. The landlord also failed to provide me with any admissible documentary evidence that could corroborate a repayment under either scenario. By contrast, I find the tenant's evidence was consistent and straightforward. Based on a balance of probabilities, I find it more likely than not that the landlord continues to hold the tenant's security deposit and has not returned it to the tenant.

There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. There was no evidence that the landlord obtained the tenant's written authorization at the end of the tenancy to retain any portion of the tenant's security deposit.

In accordance with section 38 of the Act, I find that the tenant is therefore entitled to a monetary order equal to double the deposit. No interest is payable over this period.

Conclusion

I issue a monetary order in the tenant's favour under the following terms which allows the tenant to recover his original security deposit plus a monetary award equivalent to the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the Act:

Item	Amount
Return of Security Deposit	\$300.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the Act	300.00
Total Monetary Order	\$600.00

The tenant is provided with these orders in the above terms and the landlord(s) must be served with a copy of these orders as soon as possible. Should the landlord(s) 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 subsection 9.1(1) of the Act.

Dated: October 29, 2014

Residential Tenancy Branch

