



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 all or a portion of her security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 9:44a.m. in order to enable the landlord an opportunity 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, and to present sworn testimony.

Preliminary Matter – Service of Documents

The tenant testified, and provided documentary evidence, with respect to attempts at service of the Application for Dispute Resolution package to the landlord. She provided receipts and tracking numbers for all mailings. The tenant testified that on August 1, 2014, she sent the package registered mail to the address of the landlord as indicated on her tenancy agreement. She provided a copy of that agreement with her documentary evidence. No further information with respect to this company was provided on the tenancy agreement but the phone number. There was no fax number provided. The envelope was returned indicating the business had moved. On August 6, 2014, the tenant sent the package by registered mail to the address that she found by searching the business for a phone and address listing. The envelope was returned as, "Recipient not located at address provided". On August 20, 2014, the tenant sent the package by registered mail to the address of her previous tenancy.

The tenant testified that the phone number she had been provided for the landlord was not in service. The tenant testified that she had been unable to contact the landlord or

have any attempt to communicate returned by the landlord. However, she also provided sworn testimony that she was able to confirm through her co-tenant and the on-site manager at her previous place of residence (the rental unit) that the landlord was still acting as landlord, and doing business at the residential premises identified in this application and the first page of this decision.

The purpose of serving documents is to notify the parties and allow an opportunity for those parties to prepare for the dispute resolution hearing. Failure to serve documents in a way recognized by the Legislation may result in a hearing being adjourned or dismissed.

Residential Tenancy Policy Guideline No.12 outlines the provisions for service of documents. They include but are not limited to;

- The respondent's address may be found on the tenancy agreement, in a notice of forwarding address, in any change of address document or in an Application for Dispute Resolution.
- Service on a landlord that is an incorporated company or society should be made by serving a copy at the place where the landlord conducts business as a landlord, as provided in the Legislation.
- The Legislation permits a tenant to serve a document on a landlord at the address at which the landlord carries on business as a landlord, in one of the following ways:
 - by mail,
 - by leaving a copy of the document in a mailbox or mail slot,
 - by attaching a copy of the document to a door or other conspicuous place.
 - By leaving a copy of the document with an agent of the landlord.

Deemed service refers to the presumption that a document, not personally served, has been served unless there is clear evidence to the contrary. The *Act* states that, where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail does not override the deemed service provision and service continues to be deemed to have occurred on the fifth day after mailing.

Based on undisputed, sworn testimony and supporting documentary evidence that the landlord continues to carry on business at the residential premises and that the Tenant mailed the dispute resolution package to this address by registered mail August 20, 2014, I find that the Tenant has substantiated, on a balance of probabilities, that the tenant's dispute resolution package was served to the landlord as required under the *Act*.

The Legislation provides that the Residential Tenancy Branch may issue an order that a document has been sufficiently given or served for the purposes of the Legislation when not necessarily served in accordance with the service sections. As such and in accordance with section 71(2)(c) of the *Act*, I find the landlord deemed served with the third mailing of the dispute resolution package on August 25, 2014, five days after the mailing to the address of this tenancy.

Issues to be Decided

Is the tenant entitled to a monetary award equivalent to the amount of her security deposit, or double the value 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

This tenancy began on September 1, 2013 with a rental amount of \$1130.00. The tenant's sworn, undisputed testimony indicates that the landlord continues to hold her portion of the security deposit in the amount of \$273.75. The full amount of the security deposit, split with her co-tenant and paid at the beginning of the tenancy was \$547.50.

The tenant testified that she resided with a co-tenant in this rental unit for the course of the tenancy. On ending the lease for this unit, the co-tenant signed another lease for a different rental unit in the same residential premises. The tenant moved elsewhere. The tenant testified that she had given notice to the landlord that she would be moving out before the end of December 2014. She also testified that, on moving out on December 20, 2014, she provided her landlord with her forwarding address. She testified that the co-tenant has had her portion of the security deposit returned to her. The tenant testified that she has not had her portion of the security deposit returned to her nor received any correspondence from the landlord. As well, the tenant testified that she has made several attempts to contact the landlord by phone, email and through her former building manager but she has had no response from the landlord.

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 security deposit in full 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. In this case, the landlord had 15 days after December 31, 2014 (the official end of the tenancy) to take one of the actions outlined above. In this case, the undisputed evidence is that the tenant did provide a forwarding address in writing. Therefore the landlord is required to either make an application to retain the security deposit or return the full amount to the tenant.

The tenant applied for return of the deposit. I accept the evidence of the tenant that her portion of the security deposit has not been returned. There is no evidence that the landlord has made a claim towards the tenant's security deposit in accordance with the *Act*. In fact, the tenant testified that her co-tenant received her portion of her security deposit from the landlord. I therefore find that the tenant is entitled to a monetary order of \$273.75, her portion of the security deposit from this tenancy.

Residential Tenancy Branch's Policy Guideline 17 is of relevance to the consideration of this application:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing; ...
- whether or not the landlord may have a valid monetary claim.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. I find the tenant did not waive her right to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and 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 his security deposit with interest calculated on the original amount only. No interest is payable from the period this tenancy began.

Having been successful in this application, I further find that the tenant is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms, which allows the tenant an award of double her security deposit, less the amount already returned to her co-tenant, plus the recovery of her filing fee

Item	Amount
Return of Double Security Deposit as per section 38 of the <i>Act</i> (\$547.50 x 2 = \$1095.00)	\$1095.00
Less Returned Portion of Security Deposit	-273.75
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$871.25

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: February 10, 2015

Residential Tenancy Branch

