



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; 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 1318 in order to enable the landlord to connect with this teleconference hearing scheduled for 1300. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Preliminary Issue – Service of Dispute Resolution Package

The tenant testified that she served the landlord with the dispute resolution package on 2 September 2014 by registered mail. The tenant testified that she also served the landlord by posting a copy of the dispute resolution package to the landlord's door. The tenant provided me with a Canada Post tracking number. The tenant also provided me with a witness statement that set out that the witness observed the tenant serve the landlord by both posting the package to the landlord's door and by sending the package by registered mail.

The tenant testified that the dispute resolution package was returned by Canada Post as the landlord did not collect the package from the post office.

The tenant testified that she served the landlord at the address where the tenant picked up the keys from the landlord at the beginning of the tenancy. The tenancy began on 1 December 2012. The tenant testified that this address was the landlord's residence.

The tenant testified that she had no knowledge of the landlord moving from this address. The tenant testified that when she delivered the dispute resolution package to this address she saw the same white sports utility vehicle and horse trailer in the driveway as when the tenant picked up the keys from this residence. The tenant testified that the landlord owns horses.

Subsection 89(1) of the Act deals with how a dispute resolution package may be served in an application such as the tenant's:

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:...

(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;...

I find that the tenant served the dispute resolution package to an address that meets the requirements of paragraph 89(1)(c). I make this finding on the basis that the landlord conducted her business from that property on at least one occasion and the tenant unidentified belongings at that property at the time of service that she had reasonable belief were the landlord's.

On the basis of this evidence, I am satisfied that the landlord was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of a portion of her pet damage and security deposits? 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, and the testimony of the tenant, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began 1 December 2012 and ended 31 December 2013. Monthly rent of \$1,100.00 was due on the first. The landlord continues to hold the tenant's security deposit of \$550.00, which was remitted to the landlord on 1 December 2012.

The tenant testified that she left her forwarding address in writing inside the rental unit when she vacated it. The tenant testified that she also texted the landlord her forwarding address. The tenant testified that, on 30 July 2014, she posted her forwarding address to the landlord's door. The tenant provided me with a witness statement that sets out that the witness observed the tenant post the forwarding address to the landlord's door.

The tenant testified that she did not provide consent to the landlord to keep the tenant's security deposit. The tenant testified that this tenancy was not subject of any prior orders of the Residential Tenancy Branch.

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 fifteen 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.

Section 88 governs how a forwarding address may be given under the Act:

- 88** All documents, other than those referred to in section 89 ... that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:...
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;...

I find that the tenant served the landlord with her forwarding address in writing on 30 July 2014 in accordance with paragraph 88(g) of the Act for the same reasons that I found the tenant's service of the dispute resolution was compliant with paragraph 89(1)(c) of the Act. On the basis of the tenant's sworn and uncontested testimony, I find that the landlord did not have written authorization of the tenant to keep the security deposit. On the basis of the tenant's sworn and uncontested testimony, I find that the landlord did not return the tenant's security deposit.

I find that the tenant has proven her entitlement to the return of her security deposit.

Residential Tenancy Policy Guideline, "1. Landlord & Tenant – Responsibility for Residential Premises" sets out that:

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;
- If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;
- If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;
- If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;
- whether or not the landlord may have a valid monetary claim.

At the hearing I asked the tenant if she was waiving her right to doubling of the deposit. The tenant informed me that she was not. As the landlord has not filed a claim within fifteen days of receiving the tenant's forwarding address and as the landlord has not returned the tenant's security deposit, I find that the tenant is entitled to a monetary order equivalent to the amount of her security deposit.

As the tenant has been successful in this application, the tenant is entitled to recover her filing fee from the landlord.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,150.00 under the following terms:

| Item | Amount |
|---|-------------------|
| Security Deposit Return | \$550.00 |
| Subsection 38(6) Compensation | 550.00 |
| Recovery of Filing Fee for this Application | 50.00 |
| Total Monetary Order | \$1,150.00 |

The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with this order 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: March 26, 2015

Residential Tenancy Branch

