



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 1354 in order to enable the landlord to connect with this teleconference hearing scheduled for 1330. 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 10 November 2014 by registered mail. The tenant provided me with a Canada Post tracking number. 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 the rental unit is on the lower unit of the residential property. The tenant testified that the landlord occupied the upper floor of the residential property. The tenant testified that, to the best of her knowledge, the landlord had not moved from that address.

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 tenant resided in the same home as the landlord and the tenant had no reason to believe that the landlord's residence had changed in the short period of time between when the tenancy ended and the dispute resolution package was served.

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 May 2014 and ended 31 August 2014. Monthly rent of \$1,200.00 was due on the first. The tenant and a co-tenant entered into a written tenancy agreement with the landlord. The tenant, co-tenant and landlord all signed this same tenancy agreement.

On 1 May 2014, the tenant wrote three cheques to the landlord from her personal account. One cheque was for the first month's rent in the amount of \$1,200.00. The second cheque was in the amount of \$600.00 and was intended to be the tenants' security deposit. The third cheque was in the amount of \$1,200.00 and was intended to be the tenants' last month rent. The tenant testified that the co-tenant then reimbursed half of the amounts to the tenant.

The tenant testified that on or about 28 or 29 August 2014, the landlord's partner attended at the rental unit to conduct the condition move-out inspection report. The tenant testified that the partner presented her with a letter from the landlord and a cheque for \$1,200.00. In that letter, the landlord said that she would not be returning the co-tenant's portion of the last month's rent.

The tenant testified that she placed her forwarding address in writing in the landlord's mailbox on 8 September 2014. The tenant provided me with a photograph array that showed the same.

The tenant testified that she did not provide consent to the landlord to keep the tenant's security deposit. The tenant testified to the best of her knowledge the landlord has never filed any claim in respect of this tenancy.

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:...
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for 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 8 September 2014 in accordance with paragraph 88(f) 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.

The landlord has claimed that she is withholding the portion to which the co-tenant is entitled. *Residential Tenancy Policy Guideline*, "13. Rights and Responsibilities of Co-tenants" assists in the disposition of this matter:

Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

...

A security deposit or a pet damage deposit is paid in respect of a particular tenancy agreement. Regardless of who paid the deposit, any tenant who is a party to the tenancy agreement to which the deposit applies may agree in writing to allow the landlord to keep all or part of the deposit for unpaid rent or damages, or may apply for arbitration for return of the deposit.

In accordance with this policy guideline, I find that the tenant is entitled to ask for the full amount of the security deposit. The landlord is not entitled to retain that deposit where she would not otherwise be entitled to retain it.

The landlord purported to collect a security deposit and an amount that was the last month's rent. Pursuant to *Residential Tenancy Policy Guideline*, "29. Security Deposits" an amount received as last month's rent is a security deposit. Thus, the total security deposit collected in respect of this tenancy was \$1,800.00.

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 full amount of the tenant's security deposit. I find that the tenant has proven her entitlement to the return of the balance of her security deposit. The landlord is ordered to return the balance of the security, that is, \$600.00.

Residential Tenancy Policy Guideline, “17. Security Deposit and Set off” 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.

In determining the amount of the deposit that will be doubled, the following are excluded:

- any arbitrator’s monetary order outstanding at the end of the tenancy;
- any amount the tenant has agreed, in writing, the landlord may retain from the deposit for monies owing for other than damage to the rental unit;
- if the landlord’s right to deduct from the security deposit for damage to the rental unit has not been extinguished, any amount the tenant has agreed in writing the landlord may retain for such damage.

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. No amounts are deductible.

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 \$2,450.00 under the following terms:

Item	Amount
Security Deposit Return	\$600.00
Subsection 38(6) Compensation	1,800.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$2,450.00

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 this order, this order 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 30, 2015

Residential Tenancy Branch

