



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 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.

The landlord did not attend this hearing, although I waited until 11:17 a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 11:00 a.m. The tenant's representative and one witness attended the hearing. They were given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The tenant's representative gave sworn, undisputed testimony that he served the landlord with his Application for Dispute Resolution hearing package on February 10, 2015 by registered mail. The tenant's representative provided a copy of the receipt and tracking information from Canada Post for this mailing. The tenant's representative also testified that he confirmed, through tracking information, that the landlord received the mailing. I find that the landlord was deemed served with the tenant's Application for Dispute Resolution hearing package on February 15, 2015, 5 days after its registered mailing pursuant to section 89 and 90 of the *Act*.

Issue to be Decided

Is the tenant entitled to the return of all or a portion of her security deposit?

Background and Evidence

The tenant's representative testified that this tenancy began in January, 2014 with a rental amount of \$700.00 payable on the first of each month. He testified that the sole tenant was his mother and that she has now moved to a care facility. He testified that, on November 15, 2014, his mother went into hospital and she remains in care as of the

date of this hearing. He testified that he contacted the landlord, both by phone and in writing, providing the landlord with general information about his mother's circumstances and providing the landlord with written notice to end the tenancy. He testified, with supporting documentary evidence, that on November 26, 2014, he sent written notice to end tenancy to the landlord. He provided a forwarding address in that letter. He also testified that he paid rent until the end of December on the rental unit as he was obliged to do under the *Act*.

The landlord's representative testified that he indicated to the landlord that the unit could be re-rented as of December 15, 2014 although he paid rent until the end of December. The tenant's representative testified that he took part in a walk through condition inspection of the rental unit with the landlord on December 10, 2014. He testified that he was advised by the landlord that there were no issues at that time. He testified that he was not provided with a copy of a condition inspection report.

The tenant's representative testified that, on January 15, 2015, he sent a letter to the landlord to request the return of the security deposit. Again, the tenant's representative provided a forwarding address. He testified that, on January 20, 2015, the landlord phoned him and stated that the stairs and tub needed cleaning. The witness for the tenant, the tenant's daughter, testified that she had cleaned the rental unit extensively, ensuring that it was "spotless" before turning over the keys to the landlord. She testified that the keys to the unit were provided to the landlord on December 10, 2014.

Ultimately, the tenant's representative received two cheques in the mail from the landlord. One cheque of \$25.00 was provided for the key deposit. It provided no date or other information. The tenant's representative testified that he ripped up the cheque and threw it away. The second cheque was a partial return of the tenant's security deposit in the amount of \$297.50. The tenant's representative testified that the cheque was backdated to January and that he had not cashed it as of the date of this hearing. With the delivery of the two cheques, the landlord included a note that stated a portion (\$62.50) of the tenant's security deposit was being held back by the landlord because the tenant had moved in three weeks early at the start of the tenancy.

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 10, 2014 to take one of the actions outlined above. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security 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." The tenant's representative provided sworn testimony that neither he nor the tenant, his mother, had provided authorization to retain any portion of the security deposit. As the landlord did not attend this hearing or provide evidence, there is nothing to contradict the tenant's representative's testimony. Section 38(4)(a) of the *Act* does not apply to the tenant's security deposit.

The landlord returned some of the tenant's security deposit but not all. The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be 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;*
- *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.*

Based on the undisputed evidence before me, I find that the landlords have neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. The tenants gave sworn oral testimony that they have not waived their rights 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.

I note that key deposits are not authorized under the *Act*. However, given the undisputed testimony of the tenant's representative and his witness, and given the documentary evidence provided, I find the tenant is entitled to the return of the \$25.00 key deposit.

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

Conclusion

I grant a monetary award in favour of the tenant as follows;

Item	Amount
Return of Double Security Deposit as per section 38 of the <i>Act</i> (\$350.00 x 2)	\$700.00
Less Returned Portion of Security Deposit	-297.50
Key deposit	25.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$477.50

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: May 07, 2015

Residential Tenancy Branch

