



Dispute Resolution Services

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* ("Act") for:

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38.

The landlord did not attend the hearing, which lasted approximately 21 minutes. 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. The tenant called "witness JC," who confirmed that she was the other tenant living in the rental unit with the tenant named in this application.

The tenant confirmed that the landlord was served with the tenant's application for dispute resolution hearing package ("Application") on November 6, 2014, by way of registered mail. The tenant provided Canada Post receipts and a tracking number to confirm this service. The tenant also provided a computer printout of the Canada Post tracking number to indicate that the landlord received and signed for the package on November 18, 2014. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's Application on November 11, 2014, five days after its registered mailing.

Issues to be Decided

Is the tenant entitled to a monetary award equivalent to double 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*?

Background and Evidence

The tenant testified that this tenancy began on August 1, 2012 and ended on November 1, 2013. Monthly rent in the amount of \$1,600.00 was payable on the first day of each month. The tenant provided a copy of the signed written tenancy agreement with his Application. The tenant testified that he paid a security deposit of \$800.00 to the landlord on August 1, 2012. The tenant testified that the landlord continues to retain the deposit in full, as no portion has been returned to him.

The tenant stated that no move-in or move-out condition inspections or reports were completed, as the landlord did not offer the tenant any opportunities for inspections. The tenant testified that he provided a written forwarding address by way of a letter, dated December 9, 2013. The tenant provided a copy of this letter with his Application. In addition to providing the tenant's forwarding address, the letter requests a return of the security deposit. Witness JC stated that she personally left this letter in the landlord's mailbox on December 16, 2013. The tenant provided a copy of a letter, dated January 2, 2014, that he received from the landlord, indicating that the landlord received the tenant's "recent letter" about returning the security deposit and that he would not be returning any of the deposit.

The tenant confirmed that he did not provide written permission to the landlord to retain any amount from his security deposit. The tenant confirmed that he was not aware of any application for dispute resolution filed by the landlord to retain any amount from the deposit, as the tenant has not yet been served with any application.

The tenant seeks the return of double his security deposit, totalling \$1,600.00, due to the landlord's failure to return his deposit in full or make an application for dispute resolution, within 15 days of providing a written forwarding address.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the tenant and witness JC, not all details of the submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings are set out below.

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the 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 section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, 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 38(4)(a)) or an amount that the Director has

previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I accept the tenant's undisputed evidence at this hearing, as the landlord did not appear. The tenancy ended on November 1, 2013. The tenant provided his written forwarding address on December 16, 2013, by leaving a letter in the landlord's mailbox, a service method permitted by section 88(f) of the *Act*. The letter was deemed received by the landlord on December 19, 2013, the third day after it was left in the mailbox, as per section 90(d) of the *Act*. The landlord acknowledged receipt of the forwarding address by way of the landlord's letter, dated January 2, 2014, stating that the landlord received the tenant's letter requesting a return of the deposit. The tenant did not give the landlord written permission to retain any amount from his deposit. The landlord did not return the deposit to the tenant or make an application for dispute resolution to claim against this deposit, within 15 days of his deemed receipt of the forwarding address.

Over the period of this tenancy, no interest is payable on the landlord's retention of the tenant's security deposit. In accordance with section 38(6)(b) of the *Act*, I find that the tenant is entitled to receive double the value of his security deposit, totalling \$1,600.00.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$1,600.00 against the landlord. The tenant is provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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: June 04, 2015

Residential Tenancy Branch