



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNSD, O, 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 his security deposit pursuant to section 38; an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; any other remedy or compensation under the *Act*; and authorization to recover the filing fee for this application from the landlord pursuant to section 72. The tenant testified that his only application was with respect to a request for the return of the security deposit and for a further monetary amount equivalent to the amount of his security deposit as the landlord, in his submission, failed to comply with the *Act* by not returning the security deposit. He withdrew the portion of his application that required an order for the landlord to comply with the *Act* and for any other remedy or compensation under the *Act*.

The landlord did not attend this hearing, although I waited until 1:44 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 p.m. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions with respect to his claim for return of his security deposit.

Preliminary Issue: Service of Documents

The tenant submitted a letter and an accompanying Canada Post receipt with tracking number indicating that the tenant had provided the landlord with his forwarding address on January 16, 2014. He testified that he used online tracking through Canada Post to confirm that the mailing was received by the landlord. He testified that, after he confirmed receipt of this mailing, he contacted the landlord by phone. He testified that, in asking for return of his security deposit, the landlord stated, "call the Residential Tenancy Branch" and indicated that it was not his problem to deal with the tenant's security deposit.

The tenant submitted a Canada Post receipt and tracking number indicating that the tenant had sent via registered mail a copy of his Application for Dispute Resolution with the Notice of Hearing and his evidence for this hearing on February 4, 2015. He testified that the mailing was returned to him marked "return to sender" and the online tracking information indicated that the mailing had not been picked up.

The tenant testified that he has attended to the residential premises where he had rented recently. He testified that this is where the property manager, named in this application as the

“landlord” continues to reside. The tenant stated that he last returned to the address on or about June 2015. He stated that, at that time the property manager’s name was listed on the residents’ buzzer board at the entrance to the residence. He provided sworn testimony that he pressed the buzzer for that apartment and received a voicemail with the property manager’s name and voice on it. The tenant testified that, based on all of his available information, the property manager and named landlord continues to reside at the address where he sent his Application for Dispute Resolution.

Pursuant to Residential Policy Guideline No. 12, deemed service means that a “document is presumed to have been served unless there is clear evidence to the contrary”. With respect to registered mail where a package can be tracked, the Policy Guideline provides 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. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

The sworn testimony and documentary evidence provided by the tenant show that he sent to the landlord’s address a copy of the Application for Dispute Resolution, Notice of Hearing and evidence for this hearing. Based on the evidence submitted, I find that the landlord was deemed served with these materials on February 9, 2015, 5 days after its registered mailing.

Issue(s) to be Decided

Is the tenant entitled to a return of his security deposit? Is the tenant entitled to a monetary award equal to his security deposit because the landlord has failed to comply with the terms of 38(1) of the *Act*? Is the tenant entitled to recover his filing fee or his application from the landlord?

Background and Evidence

The tenant testified that this tenancy began on September 1, 2009. He testified that both himself and his wife (at that time) resided in the rental unit. He submitted a copy of a one page tenancy agreement outlining the details of the tenancy. That agreement showed a rental amount of \$760.00 payable on the first of each month. The tenant’s submission and his testimony showed that he paid a security deposit of \$380.00 on or about September 1, 2009 with respect to this tenancy. The tenant applied seeking the return of the \$380.00 plus a further \$380.00 as the landlord had not returned his deposit in accordance with the *Act*.

The tenant testified that he vacated the residence on or about February 3, 2013 and provided a forwarding address in writing on January 16, 2014. The tenant submitted a copy of the letter to the landlord with his forwarding address as well as the Canada Post mail receipt and tracking information for his mailing of that address on January 16, 2014. He testified that, when he contacted the landlord by phone and asked for return of his security deposit, the landlord stated,

“call the Residential Tenancy Branch” and indicated that it was not his problem to deal with the tenant’s security deposit.

As above, I find the landlord deemed served with the materials submitted by the tenant for this application. The tenant provided candid testimony that he resided with his ex wife at this residence and that he did not provide his forwarding address in writing until almost one year after he vacated the residence when he became aware of his rights with respect to his security deposit. The tenant testified that the security deposit has not been returned by the landlord to either his wife or himself. He testified that he did not agree verbally or in writing to allow the landlord to retain any portion of his security deposit.

Analysis

Section 39 of the *Act* provides that if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

- (a) the landlord may keep the security deposit or the pet damage deposit, or both, and
- (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

In this circumstance, the tenant testified that he vacated the rental unit on approximately February 3, 2013. He testified, providing documentary evidence to prove that he supplied his forwarding address on January 16, 2014, within one year of the end of the tenancy. Following the provision of his forwarding address, the tenant waited another year before filing an application for dispute resolution for the return of his security deposit. He is strictly in compliance with his obligations and the timelines provided in the *Residential Tenancy Act*.

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 January 16, 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.” As there is no evidence that the tenant has given the landlord written authorization at the end of this tenancy to retain any portion of his security deposit, section 38(4)(a) of the *Act* does not apply to the tenant’s security deposit.

The tenant seeks return of the deposit. The evidence of the tenant is that he vacated the residence on or about February 3, 2013 and provided a forwarding address in writing on January 16, 2014. There is no evidence that the landlord has applied to the Residential Tenancy Branch to retain all or a portion of the tenant's security deposit nor has he provided any response to this application despite his being deemed served in accordance with the *Act*. Therefore, I find that the tenant is entitled to a monetary order including \$380.00 for the return of the full amount of his security deposit.

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, sworn evidence of the tenant 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. The tenant gave sworn oral testimony that he has not waived his 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 total monetary order amounting to double the value of his security deposit with interest calculated on the original amount only. No interest is payable for this period.

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 issue a monetary order in favour of the tenant as follows;

Item	Amount
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Return of Double Security Deposit as per section 38 of the <i>Act</i> ($\$380.00 \times 2 = \760.00)	\$760.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$810.00

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: August 13, 2015

Residential Tenancy Branch

