# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on June 19, 2015 for the return of the security deposit.

Both parties appeared for the hearing and provided affirmed testimony. The Landlord confirmed receipt of the Tenant's Application by registered mail pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act"). However, both parties denied receipt of each other's documentary evidence which was attempted during a meeting prior to this hearing. Both parties confirmed that they attempted to serve their evidence personally during the meeting but they were quickly returned to each other.

As both parties disputed the service of evidence from each other, I decided to start the proceedings by not considering any of the documentary evidence provided. I informed the parties that if there was a need to consider it, I would address the issue of adjourning the proceedings to allow proper exchange of the evidence at that point during the hearing. However, during the hearing the Tenant did allow me to rely on an email which was contained in the Landlord's evidence package which, although the Tenant did not have before her, she agreed as to the contents of it.

As a result, I relied on the parties' oral testimony and the limited documentary evidence above to make findings in this decision. The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present evidence only on the issues to be decided.

Issue(s) to be Decided

- Did the Tenant provide the Landlord with a forwarding address in writing?
- Is the Tenant entitled to the return of the security deposit?

Background and Evidence

Both parties confirmed that this tenancy started on December 31, 2014 on a month to month basis. A written tenancy agreement was completed and rent in the amount of $1,100.00 was payable in advance on the last day of each month. The Tenant provided the Landlord with a $550.00 security deposit on December 19, 2014 which the Landlord still retains.

The Tenant testified that she provided a written note to the Landlord on April 31, 2015 to end the tenancy for May 31, 2014. The Tenant testified that in the written note she had documented her forwarding address. The Tenant testified that she had sent the Landlord an email shortly after the tenancy had ended reminding the Landlord of the forwarding address for the return of her security deposit.

The Landlord disputed that he had received a forwarding address in writing from the Tenant. However, the Landlord then acknowledged that he had received an email from the Tenant which was contained in his documentary evidence. The Tenant allowed me to examine this email which details the Tenant's forwarding address. The Landlord argued that because this was an email, it had not been provided to him in writing, although he acknowledged that he had received the email on June 3, 2015. The Landlord also argued that the address provided by the Tenant was not the address where the Tenant was residing as he had visited the address in an attempt to serve evidence.

The Tenant testified that she did not have a service address for the Landlord as the Landlord had not provided one. Therefore, this was the reason why the parties communicated with each other by email during this tenancy. The Tenant confirmed that she had not consented to the Landlord keeping her security deposit.

The Landlord testified that the tenancy had ended on June 2, 2015 because the Tenant was still in the process of moving out her belongings. The Landlord also acknowledged receipt from the Tenant of her written notice to end the tenancy but argued that this had not been provided on the approved form required by the Act. The Landlord argued that the Tenant had over held the tenancy after she had given written notice to end it and had also caused damage to the rental unit for which he had provided photographic evidence to support this. The Tenant denied this and stated that she had rebuttal evidence to show that she did not cause damage to the rental unit. The Landlord submitted that he was not aware that there was a time limit to make an Application to keep the Tenant's security deposit.

Analysis

Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an Application to claim against it.

The Landlord argued that the Tenant did not provide him with a forwarding address in writing. However, I find this not to be the case. I accept that the Landlord and Tenant communicated by email during this tenancy and this was a normal and acceptable method of communication between them. Although email is not recognized as a method of service under the Act, in this case, I find the Landlord was served with the Tenant's forwarding address which was sent to the Landlord in the June 3, 2015 email. This email evidence also supports the Tenant's testimony that she personally provided the Landlord with the same address on her written notice to the end the tenancy. Section 52 of the Act does not require a Tenant's notice to end a tenancy be in an approved form.

Therefore, I am only able to conclude that on the balance of probabilities the Landlord was served with the Tenant's forwarding address either in the Tenant's written notice before the tenancy ended or provided by the Tenant in the email of June 3, 2015. Therefore, the **latest** date the Landlord would have had to make an Application to keep the Tenant's security deposit based on the above evidence would have been June 18, 2015; this being 15 days after the Tenant provided her address on the email.

However, there is no evidence before me that the Landlord at any time made an Application to keep the Tenant's security deposit, returned it back to her, or obtained the Tenant's written consent to keep it. Therefore, I must find that the Landlord failed to comply with Section 38(1) of the Act.

Section 38(6) of the Act stipulates that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the deposit. Based on the foregoing, I find the Tenant is entitled to double the return of the security deposit in the amount of **$1,100.00**. No interest is payable on this amount.

The Tenant is issued with a Monetary Order which must be served on the Landlord. The Tenant may then file and enforce this order in the Provincial Court (Small Claims) as an order of that court if the Landlord fails to make payment in accordance with the Tenant's written instructions. Copies of the order are attached to the Tenant's copy of this decision.

Conclusion

The Landlord has breached the Act by failing to deal properly with the Tenant's security deposit. Therefore, the Tenant's claim for the return of double the security deposit is granted in the amount of $1,100.00.

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: December 02, 2015

Residential Tenancy Branch