



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* ("Act") for:

- authorization to obtain a return of double the amount of his security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 20 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant confirmed that his Application was filed on June 18, 2015 and his hearing was initially scheduled for November 24, 2015. The tenant confirmed that both parties agreed to delay the hearing, by way of a signed letter, dated July 8, 2015, a copy of which the tenant provided. Therefore, the hearing was delayed to this proceeding on January 21, 2016 and a new notice of hearing, dated July 29, 2015, was provided to the tenant to serve to the landlord.

The tenant testified that the landlord was served with the tenant's application for dispute resolution hearing package ("Application") with the new notice of hearing on July 30, 2015, by way of registered mail. The tenant provided a Canada Post tracking number verbally during the hearing. The tenant confirmed that the landlord was served with the Application at the address provided by her in the written tenancy agreement that both parties signed. The tenant provided a copy of the written tenancy agreement. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenants' Application on August 4, 2015, five days after its registered mailing.

I advised the tenant that I would not be considering his twenty pages of written evidence and photographs that he said was mailed to the landlord on January 18, 2016, just three days before this hearing. I received the evidence at the Residential Tenancy Branch ("RTB") on January 19, 2016. I informed the tenant that his evidence was late, as it was submitted less than 14 days prior to this hearing, contrary to Rule 3.14 of the *RTB Rules of Procedure*, and that I was not satisfied that the landlord had appropriate notice to respond to this evidence prior to this hearing.

I amend the tenant's application, pursuant to section 64(3)(c) of the *Act*, to increase the tenant's monetary claim from \$450.00 to \$1,700.00. The tenant confirmed that he only included one of the deposits paid rather than both and that he did not include the doubling provision. However, I find that the tenant provided sufficient information in his "details of the dispute" section of his Application that he was seeking the return of both deposits. I find that the landlord had notice of the tenant's claims at this hearing. I also find that the tenant does not have to specifically apply for double the return of his deposits in his Application. As long as the tenant is entitled to double the value and he has not specifically waived his right to double, I am still entitled to consider this claim, as per Residential Tenancy Policy Guideline 17.

Issues to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of his deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for his Application from the landlord?

Background and Evidence

The tenant testified that this tenancy began on August 1, 2013 and ended on April 1, 2015. Monthly rent in the amount of \$850.00 was payable on the first day of each month. The tenant stated that a security deposit of \$425.00 and a pet damage deposit of \$425.00 were paid to the landlord and the landlord continues to retain both deposits.

The tenant confirmed that move-in and move-out condition inspection reports were not completed for this tenancy. The tenant explained that he provided a written forwarding address to the landlord by way of a letter around June 1, 2015. The tenant stated that the landlord received his letter because she responded with a letter to him, dated June 4, 2015. The tenant stated that this letter claims damages from the deposits, with the

tenant's forwarding address clearly printed on the top of the letter, which he received at his forwarding address. The tenant provided a copy of this letter.

The tenant stated that he did not provide written permission to the landlord to keep any amount from his deposits. The tenant confirmed that he did not receive an application for dispute resolution from the landlord to retain any amount from his deposits.

The tenant seeks a return of double the amount of his deposits, totalling \$1,700.00, because the landlord failed to return it in full or make an application for dispute resolution, within 15 days of the tenant providing a written forwarding address. The tenant also seeks to recover the \$50.00 filing fee paid for his Application.

Analysis

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

Section 38 of the *Act* requires the landlord to either return the tenant's deposits or file for dispute resolution for authorization to retain the deposits, 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 deposits. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposits 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 make the following findings based on the undisputed facts presented by the tenant at this hearing. The tenancy ended on April 1, 2015. The tenant provided a written forwarding address by way of a letter to the landlord on June 1, 2015. The tenant provided a written letter, dated June 4, 2015, from the landlord with his forwarding address printed on the letter, which he received at the same forwarding address.

The tenant did not give the landlord written permission to retain any amount from his deposits. The landlord did not return the full amount of the deposits to the tenant or make an application for dispute resolution to claim against the deposits, within 15 days of the receipt of the written forwarding address. The landlord's right to claim against the deposits for damage was extinguished by sections 24 and 36 of the *Act*, for failure to

complete move-in and move-out condition inspection reports for this tenancy. Therefore, I am required to double the value of the tenant's deposits as per Residential Tenancy Policy Guideline 17.

Over the period of this tenancy, no interest is payable on the landlord's retention of the tenant's deposits. In accordance with section 38(6)(b) of the *Act*, I find that the tenant is entitled to receive double the value of both deposits, totalling \$1,700.00.

As the tenant was successful in his Application, I find that he is entitled to recover the \$50.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$1,750.00 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: January 22, 2016

Residential Tenancy Branch

