



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was convened in response to an application by the tenant for a monetary order for the return of the security deposit and compensation under Section 38. The application is inclusive of an application for recovery of the filing fee.

I accept the tenant's evidence that despite the landlord having been personally served with the application for dispute resolution and notice of hearing as well as having been served by *registered mail* – both in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing.

The tenant was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to monetary amount claimed?

Background and Evidence

The undisputed facts before me are as follows. The tenancy began November 01, 2014 and ended June 30, 2015. The landlord collected a security deposit of \$1150.00 at the outset of the tenancy and still retains it in full. There was no move in or move out inspections conducted in accordance with the Act.

The tenant provided that on July 07, 2015 they sent the landlord a forwarding address via a text message in which it states a temporary or interim forwarding address for the tenant until they moved into permanent accommodations. The tenant provided a copy of the text message. The tenant claims the landlord received the text message and testified the landlord responded to it.

Analysis

The burden of proof in this matter lies with the applicant. On preponderance of the evidence and on the balance of probabilities, I have reached a decision.

Section 38 of the Act provides, in relevant part, as follows

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

And

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In this matter I find the tenant did not provide the landlord with their forwarding address in writing. A message by text is not *in writing* as required by the Act. Also, the Act does not recognize a text message as a document given or served in accordance with the Act, and the deeming provisions of Section 90 of the Act do not apply to a text message. Effectively, I find the tenant did not provide the landlord with their forwarding address in accordance with Section 38 so as to trigger the doubling provisions of Section 38. Therefore, the tenant is not entitled to double the original amount of the deposit. None the less, **Sections 24 and 36** of the Act, in relevant parts state:

Consequences for tenant and landlord if report requirements not met

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [*2 opportunities for inspection*],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Consequences for tenant and landlord if report requirements not met

36 (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) [*2 opportunities for inspection*],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The evidence is that the landlord did not complete a condition inspection report in concert with the Act therefore would be precluded from making a claim to retain the deposit - even if the tenant had provided the landlord with their forwarding address in concert with requirements of the Act.

Therefore, as the landlord's right to claim against the deposit has been extinguished, it is appropriate on the tenant's application that I order the landlord to return the original deposit to the tenant in the full amount of \$1150.00. The tenant is further entitled to recovery of the \$50.00 filing fee for this application for a total entitlement of **\$1200.00**.

Conclusion

The tenant is given a **Monetary Order** under Section 67 for the sum of **\$1200.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on both parties.

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 18, 2016

Residential Tenancy Branch

