



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* (the Act) for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 1346 in order to enable the landlord to connect with this teleconference hearing scheduled for 1330. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The tenant testified that she served the landlord with the dispute resolution package on 10 August 2015 by registered mail. The tenant provided me with a Canada Post customer receipt that showed the same. The tenant testified that this mailing was returned unclaimed. The tenant testified that she also sent a photograph of the notice of hearing to the landlord by text message.

Residential Tenancy Policy Guideline, "12. Service Provisions" sets out that service cannot be avoided by failing to retrieve the mailing:

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.

In accordance with sections 89(1) and 90 of the Act, the landlord was deemed served with the dispute resolution package on 15 August 2015, the fifth day after its mailing.

Application for Registered Mail Costs

At the hearing, the tenant asked to recover \$22.00 for the cost of registered mailings. One of the registered mailings was to deliver the tenant's forwarding address. The other mailing was for the purpose of serving the landlord with the tenant's dispute resolution package.

In relation to the cost of the registered mail to serve the tenant's forwarding address, the tenant was permitted to use any of the methods of service in section 88 of the Act. Many of these methods have no associated costs, e.g. posting to a door. The tenant elected to use registered mail. The tenant is not entitled to recover this cost as the landlord's acts are not the proximate cost of the expense.

The cost of serving the landlord with the dispute resolution package is an expense best characterized as a disbursement. Section 72 of the Act allows for repayment of fees for starting dispute resolution proceedings and charged by the Residential Tenancy Branch. While provisions regarding costs and disbursements are provided for in court proceedings, they are specifically not included in the Act. I conclude that this exclusion is intentional.

I find that the tenant is not entitled to make any claim for compensation for the registered mailing as it is a non-compensable disbursement.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of a portion of her security deposit? Is the tenant entitled to a monetary award equivalent to the amount of her security deposit 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 this application from the landlord?

Background and Evidence

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

This tenancy began 1 November 2014. The parties entered into a written tenancy agreement on 1 November 2014. Monthly rent of \$1,400.00 was due on the first. At the beginning of the tenancy the landlord collected a security deposit in the amount of \$700.00, which she continues to hold. The tenancy ended 23 April 2015.

There was no condition inspection report completed at the beginning of the tenancy.

On 8 May 2015, the tenant delivered her forwarding address to the landlord by text message. On 18 June 2015, the tenant again delivered her forwarding address to the landlord by text message. The landlord acknowledged receipt of that message and stated that she would send the tenant her security deposit.

On 30 June 2015, the tenant received return of \$421.25 from the security deposit. The landlord sent a letter to the tenant explaining the reasons for the deductions.

On 2 July 2015, the tenant sent a letter containing her forwarding address to the landlord. The forwarding address was sent by registered mail. The 2 July 2015 letter demanded return of the remainder of the tenant's security deposit.

The tenant did not deposit the partial return of the security deposit as she did not want to be seen as accepting the landlord's deductions. The tenant testified that she is still in possession of the cheque, but that it is now stale dated.

The tenant testified that there are no prior orders of the Residential Tenancy Branch in respect of this tenancy. The tenant testified that she did not authorize any deductions from her security deposit.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a 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 subsection 38(6) of the Act equivalent to the value of the security deposit.

Pursuant to paragraph 38(4)(a) of the Act, 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.

This tenancy ended 23 April 2015. I find that the landlord was deemed to have received the tenant's forwarding address in writing on 7 July 2015. Pursuant to subsection 38(1) the landlord had until 22 July 2015 to either return the tenant's entire security deposit to her or to file for dispute resolution. The landlord has done neither. The landlord was not entitled to retain any amount from the security deposit as the tenant did not authorize any deduction in writing and there are no prior orders of this Branch.

Residential Tenancy Policy Guideline, "17. Security Deposit and Set off" sets out that:

4. In determining the amount of the deposit that will be doubled, the following are excluded from the calculation:
 - any arbitrator's monetary order outstanding at the end of the tenancy;
 - any amount the tenant has agreed, in writing, the landlord may retain from the deposit for monies owing for other than damage to the rental unit ...;
 - if the landlord's right to deduct from the security deposit for damage to the rental unit has not been extinguished, any amount the tenant has agreed in writing the landlord may retain for such damage.

[footnotes removed]

The landlord has breached subsection 38(1) of the Act and, pursuant to section 38 of the Act and Guideline 17, must pay the tenant both her security deposit as well as compensation equivalent to the full amount of the security deposit.

The tenant was entitled to not accept a partial repayment of the security deposit in order to avoid any perception that she was waiving her rights to the return of the entire amount. The tenant is ordered to return the stale-dated cheque to the landlord.

As the tenant has been successful in her application, she is entitled to recover the cost of her filing fee from the landlord.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,450.00 under the following terms:

Item	Amount
Return of Security Deposit	\$700.00
Subsection 38(6) Compensation	700.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$614.00

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 subsection 9.1(1) of the Act.

Dated: February 04, 2016

Residential Tenancy Branch

