



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 by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on January 8, 2016 for the return of the security deposit and recovery of the filing fee from the Landlord. The Tenant appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance for the Landlord during the seven minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Tenant.

The Tenant testified that she served the Landlord with a copy of the Application and the Notice of Hearing documents on January 13, 2016 by registered mail. The packages were sent to the Landlord’s service address documented on the signed tenancy agreement for this tenancy. The Tenant provided the Canada Post tracking number into evidence to verify this method of service and explained that the Landlord had refused or failed to pick up the package. Section 90(a) of the *Residential Tenancy Act* (the “Act”) provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Tenant, I find the Landlord was deemed served with the required documents on January 18, 2016 pursuant to the Act.

Issue(s) to be Decided

Is the Tenant entitled to the return of her security deposit? If so, is the Tenant entitled to double the amount back minus any authorised deductions?

Background and Evidence

The Tenant testified that this tenancy started on August 1, 2015. A written tenancy agreement was signed which detailed the Landlord’s service address. The Tenant was required to pay rent of \$500.00 on the first day of each month. The Tenant provided a

\$250.00 security deposit to the Landlord at the start of the tenancy which the Landlord still retains.

The Tenant testified that the tenancy ended by mutual agreement on September 30, 2015 and provided a copy of this agreement into evidence. The Tenant provided the Landlord with a forwarding address in a letter dated November 4, 2015 which was served to the Landlord by registered mail on November 5, 2015. The Tenant provided a copy of the Canada Post tracking number to verify this method of service and confirmed that it was sent to the service address detailed by the Landlord on the tenancy agreement. The Tenant informed that the letter was returned back to her as unclaimed.

The Tenant testified that she only allowed the Landlord to make a deduction of \$20.27 from her security deposit for unpaid utilities and was hoping to get the remaining balance back from the Landlord in the amount of \$229.73. However, to date this has not been returned by the Landlord and the Tenant now seeks to claim double this amount pursuant to the provisions of the Act.

Analysis

The Act contains comprehensive provisions on dealing with a tenant's security deposit. 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. Section 38(4) (a) of the Act provides that a landlord may make a deduction from a security deposit if the tenant consents to this in writing.

I accept the undisputed evidence that the tenancy ended on September 30, 2015 by mutual agreement. I accept the Tenant's undisputed evidence that she provided the Landlord with a forwarding address in writing on November 5, 2016. Pursuant to Section 90(a) of the Act, the Landlord is deemed to have received this on November 10, 2015.

There is no evidence before me that the Landlord made an Application within 15 days of receiving the Tenant's forwarding address or obtained written consent from the Tenant to withhold the remaining amount of \$229.73 for which the Tenant did not authorize. Therefore, I am only able to conclude that the Landlord failed to comply with Sections 38(1) and 38(4) (a) of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies. The security deposit was held in trust for the Tenant by the Landlord. At no time does a landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If a landlord and a tenant are unable to agree to the repayment of a

security deposit or to deductions to be made from it, the landlord must file an Application within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that a landlord feels they are entitled to keep the security deposit, based on unproven claims. A landlord may only keep a security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the Tenant. Here the Landlord did not have any authority under the Act to keep the remaining portion of the Tenant's security deposit.

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. Policy Guideline 17 provides for three examples on how security deposits are to be offset. In particular, Example C best demonstrates how the security deposit is to be awarded calculated in this case. Accordingly, the Tenant authorized a deduction of \$20.27 and this leaves a balance of \$229.72 which is to be doubled and awarded to the Tenant in the amount of \$459.46.

As the Tenant has been successful in this matter, the Tenant may recover the \$50.00 filing fee pursuant to Section 72(1) of the Act. Therefore, the Tenant is issued with a Monetary Order for a total balance of \$509.46. This order must be served on the Landlord. The Tenant may then file and enforce the order in the Small Claims Division of the Provincial Court as an order of that court if the Landlord fails to make payment. 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 is awarded double the amount back after deducting the authorized deductions. The balance outstanding to the Tenant is \$509.46. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: August 18, 2016

Residential Tenancy Branch

