



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "*Act*"). The tenant applied for monetary order for the return of double his security deposit under the *Act*.

The tenant, an agent for the tenant, the landlord, and an agent for the landlord attended the teleconference hearing. Both parties provided affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matter

I have considered the date of the tenant's application and find that it is within the 2 year timeline to file an Application under the *Act*.

Issue to be Decided

- Is the tenant entitled to the return of double his security deposit under the *Act*?

Background and Evidence

Neither party submitted a copy of the tenancy agreement. The parties agreed that a month to month tenancy began on February 1, 2013 and ended on May 31, 2014. The tenant paid a security deposit of \$195.00 at the start of the tenancy.

The tenant testified that he provided his written forwarding address by registered mail to the landlord dated April 23, 2014. A copy of the written forwarding address was

submitted in evidence. A registered mail tracking number with customer receipt dated April 23, 2014 was also submitted in evidence. The landlord testified that she could not recall if she received the tenant's written forwarding address because it was a long time ago and said "I'm old."

There is no dispute that the landlord returned \$20.00 of the tenant's \$195.00 security deposit by cheque and that the tenant cashed the \$20.00 cheque from the landlord. The landlord testified that she had verbal permission from the tenant to return only \$20.00 to the tenant, which the tenant vehemently denied. The landlord confirmed that she did not have an agreement in writing regarding the security deposit and has not filed an Application for Dispute Resolution claiming towards the tenant's security deposit.

The tenant stated that he is not waiving his right to double the security deposit if he is so entitled under the *Act*.

Analysis

Based on the above, the testimony of the parties and the documentary evidence before me, and on a balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Tenant's claim for the return of double the security deposit – Given the registered mail tracking number and customer receipt, the copy of the tenant's written forwarding address and the cheque from the landlord in the amount of \$20.00, I find the landlord was deemed served with the tenant's written forwarding address on April 28, 2014 which is five days after it was mailed pursuant to section 90 of the *Act*.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an arbitrator, or the written agreement of the tenant. In the matter before me, I find the landlord did not have any authority under the *Act* to keep any portion of the security deposit and did not return the full security deposit to the tenant within 15 days in accordance with the *Act*. Section 38 of the *Act* applies which states:

Return of security deposit and pet damage deposit

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

(a) the date the tenancy ends, and

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

the landlord must do one of the following:

(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;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

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

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

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

[my emphasis added]

As there was no evidence before me that the tenant signed over any portion of his \$195.00 in writing, and taking into account that the landlord has not applied to retain any portion of the tenant's security deposit since receiving the tenant's written forwarding address, I find the landlord has breached section 38 of the *Act* by failing to return the tenant's security deposit in full to the tenant within 15 days of receiving the forwarding address of the tenant in writing on April 28, 2014, having not made a claim towards the security deposit, and by not having the written permission of the tenant to retain any portion of the security deposit.

Given the above, I find the tenant is entitled to the return of double the original security deposit of \$195.00 for a total of \$390.00. I note that the tenant's security deposit accrued \$0.00 in interest since the start of the tenancy; however, I will deduct \$20.00 from the \$390.00 amount as the tenant confirmed that he cashed the \$20.00 cheque received from the landlord for the return of a \$20.00 portion of the security deposit. Therefore, I find the tenant is entitled to **\$370.00**.

Monetary Order – The tenant has established a total monetary claim in the amount of **\$390.00**, comprised of double the \$195.00 security deposit, less \$20.00 already paid by the landlord. I grant the tenant monetary order pursuant to section 67 of the *Act* in the amount of **\$370.00**.

Conclusion

The tenant's application is successful.

The tenant has established a total monetary claim of \$390.00 which is reduced to \$370.00 after deducting the \$20.00 cheque already cashed by the tenant from the landlord. The tenant is granted a monetary order under section 67 for the amount owing by the landlord to the tenant of \$370.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 19, 2016

Residential Tenancy Branch

