Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing convened as a result of the Tenant's Application for Dispute Resolution wherein the Tenant requested return of his security deposit and to recover the filing fee.

Only the Tenant appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified that he served the Landlord with the Notice of Hearing and his Application on July 25, 2016 by registered mail. A copy of the registered mail tracking number is included on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline, "12. Service Provisions" provides that service cannot be avoided by refusing or failing to retrieve registered mail:

> 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.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of July 30, 2016 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Tenant's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to return of his security deposit?

2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified as follows. Monthly rent was payable in the amount of $850.00 and the Tenant paid $425.00 as a security deposit.

The tenancy began on February 1, 2016. The Tenant stated that he moved in a few days early in February 2016 and provided the Landlord with a contribution towards rent at that time.

The Tenant testified that the Landlord did not do a move in condition inspection report as required by the *Residential Tenancy Act.*

The Tenant further testified that the Landlord did not perform a move out condition inspection report.

The Tenant testified that he provided the Landlord his forwarding address by text message on July 8, 2016 to which the Landlord responded. A copy of these messages were provided in evidence by the Tenant.

The Tenant confirmed that the Landlord did not return the deposit, nor did he make an application for dispute resolution within 15 days of receipt of his forwarding address or the end of the tenancy.

The Tenant also sought recovery of the filing fee paid.

Analysis

Section 38 of the *Residential Tenancy Act* provides as follows:

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(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.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of the Act.

There was no evidence to show that the Tenants had agreed, in writing, that the Landlord could retain any portion of the security deposit.

I find that the Tenant provided the Landlord with his forwarding address on July 6, 2017 by text message.

While delivery of a forwarding address by text message is not generally acceptable, I find in this case the Landlord confirmed receipt of the address and communicated that he would not return the security deposit. For greater clarity, I reproduce some of these messages as follows:

Tenant: “Hi [Landlord’s name]. What’s the word on the deposit. Could sure use the cash.”

> *Tenant*: "Oh, my address down here, in case you need it, is: [Tenant's name] [address withheld]. You have my email for the bank deposit of the DD plus 5 months interest."
>
> *Landlord*: "I don't think so. You have caused over $600 damage so please feel free to send me the difference"

The text messages continue as the Landlord continues to assert the Tenant is not entitled to return of his deposit. The Tenant then provides the Landlord with information as well as the website link regarding deposits from the Residential Tenancy Branch website as follows:

> *Tenant:* "Returning Deposits When a residential tenancy ends and after a tenant gives the landlord their forwarding address in writing, the landlord must return all of the deposits plus any interest unless the tenant agrees in writing to allow the landlord to keep all or part of the deposit or an arbitrator orders that the landlord may keep the deposit."

In response, the Landlord continues to itemize concerns he has regarding the condition of the rental unit. The Tenant informs the Landlord that he intends to apply for arbitration and writes as follows:

> *Tenant:* "Did you read the government link I sent. I will be taking this to arbitration, if we can't resolve this between ourselves. That way, it will be a fair, impartial person making any decision."

The Landlord responds as follows:

> *Landlord:* "I'm done dealing with this. I have the pics to prove it".

The Tenant then informs the Landlord as follows:

> "Without a walkthrough either when I moved in or moved out, we have no way of knowing who died what" [reproduced as written].

In response the Landlord writes:

> "I'm done. On holidays and I'm blocking you"

I also find that there was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required under section 38.

By failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlord also extinguished his right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act.

The security deposit is held in trust for the Tenants 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. If the Landlord and the Tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the Landlord *must* file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator. If the Landlord believes they are entitled to monetary compensation from the Tenant, they must *either* obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenant's security deposit. Here the Landlord did not have any authority under the *Act* to keep any portion of the security deposit and is therefore in breach of section 38 of the *Act.*

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the *Act*, that the Landlord pay the Tenant the sum of **$950.00** , comprised of double the security deposit (2 x $425.00 = $850.00) and the $100.00 fee for filing this Application.

Conclusion

The Tenant is given a formal Monetary Order in the amount of **$950.00** for service on the Landlord as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, except as 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: January 24, 2017

Residential Tenancy Branch