



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD 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, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant and a legal advocate for the tenant (the "advocate") attended the teleconference hearing. The tenant and advocate gave affirmed testimony, were provided the opportunity to present evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), the Application for Dispute Resolution (the "Application") and documentary evidence were considered. The advocate provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the landlord by registered mail on August 24, 2016 and submitted a tracking number in evidence which has been included on the cover page of this decision for ease of reference. According to the online registered mail tracking information the registered mail package was "unclaimed" and returned to sender. Section 90 of the *Act* states that documents are deemed served five days after they are mailed. Therefore, I deem the landlord was served as of August 29, 2016, which was five days after the registered mail package was mailed to the landlord. The advocate testified that the registered mail package was returned to her and that the landlord has previously been served at the address provided by the landlord in other applications but that this package was unclaimed by the landlord. I am satisfied that the landlord has been sufficient served under the *Act*.

I note that refusal or neglect to pick up a registered mail package on the part of the landlord does not constitute grounds for a Review Consideration.

Issues to be Decided

- Has the tenant provided sufficient evidence to support a monetary order under the *Act*?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

According to the tenant, the landlord refused to provide a written tenancy agreement which I will deal with later in this decision. The tenant and advocate confirmed that the tenant paid a security deposit of \$375.00 at the start of the tenancy. According to the advocate, the tenancy ended due to frustration of the tenancy under the *Act* caused by a fire in the building on March 21, 2016. The tenant confirmed that rent for March 2016 had been paid in full in the amount of \$750.00.

The advocate affirmed that the tenant provided his written forwarding address to the landlord dated May 4, 2016 by mail. The mail was not returned to the tenant, according to the advocate. The advocate and tenant confirmed that the tenant did not give the landlord authority to retain any portion of the security deposit and that the landlord did not file an application to claim against the security deposit. The tenant confirmed that he has not received any portion of his \$375.00 security deposit from the landlord.

In addition, the tenant is seeking the return of the remainder of his March 2016 rent as the tenancy ended on March 21, 2016 due to no fault of the tenant as a fire broke out in the rental building. The amount claimed by the tenant is \$241.94 which is comprised of a per diem rental amount of \$24.19 per day for 10 days. The per diem amount is calculated by using the monthly rent of \$750.00, dividing that amount by 31 days in March 2016 for the amount of \$24.194 and multiplying that amount by the 10 days that the tenant had no use of the rental unit for a total of \$241.94.

Analysis

Based on the above, and the undisputed documentary evidence and the undisputed testimony and on a balance of probabilities, I find that the landlord has breached of section 38 of the *Act*.

Firstly, I note that the landlord was served with the Notice of Hearing, Application and documentary evidence and did not attend the hearing which I find results in this tenant's Application being unopposed by the landlord. Secondly, there was no evidence before me to support that the tenant had agreed, in writing, that the landlord could retain any

portion of the tenant's \$375.00 security deposit, which has accrued no interest to date. Thirdly, there was also no evidence to show that the landlord applied for dispute resolution, within 15 days of May 9, 2016. The date of May 9, 2016 is used as it is later than the end of tenancy date of March 21, 2016 when the tenancy ended due to a fire in the rental building. In addition, I accept the undisputed testimony that the tenant mailed his written forwarding address to the landlord on May 4, 2016 and that pursuant to section 90 of the *Act* is deemed five days after it was mailed. Section 38 of the *Act* applies and 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]

Based on the above, I find the landlord breached section 38 of the *Act* by failing to apply for dispute resolution or return the tenant's security deposit in full 15 days after May 9, 2016, the date the landlord is deemed to have been served with the tenant's written forwarding address.

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 security deposit to the tenant within 15 days of May 9, 2016 as required by the *Act*.

Section 38(6) of the *Act* provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant **double** the amount of the security deposit. The legislation does not provide any flexibility on this issue. As a result, I grant the tenant **\$750.00** which is double the original security deposit amount of \$375.00.

Regarding the return of 10 days of March 2016 rent, I also consider this portion unopposed and that the tenant is entitled to **\$241.94** as claimed above for the loss of the 10 days of use and occupancy of the rental unit for March 22, 2016 to March 31, 2016.

Based on the above and pursuant to section 67 of the *Act*, I grant the tenant a total monetary order in the amount of **\$991.94**.

Furthermore, I accept the undisputed testimony that the landlord refused to provide a written tenancy agreement to the tenant. Section 13 of the *Act* applied and states:

Requirements for tenancy agreements

13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

- (a) the standard terms;
- (b) the correct legal names of the landlord and tenant;
- (c) the address of the rental unit;
- (d) the date the tenancy agreement is entered into;
- (e) the address for service and telephone number of the landlord or the landlord's agent;
- (f) the agreed terms in respect of the following:
 - (i) the date on which the tenancy starts;

- (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
- (iii) if the tenancy is a fixed term tenancy,
 - (A) the date the tenancy ends, and
 - (B) whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date;
- (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;
- (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;
- (vi) which services and facilities are included in the rent;
- (vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

(3) Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

[my emphasis added]

Given the above, I find the landlord breached section 13 of the *Act* by failing to have the tenancy agreement in writing and to provide the tenant with a copy of a written tenancy agreement.

Accordingly, I make the following order against the landlord.

I ORDER the landlord to comply with sections 13 and 38 of the *Act* in the future. Failure to do so could lead to a recommendation for an administrative penalty under the *Act*. The maximum penalty for an administrative penalty under section 94.2 of the *Act* is \$5,000.00 per day and may be imposed for each day the contravention or failure continues.

Conclusion

The tenant's application is fully successful.

The landlord has breached sections 13 and 38 of the *Act* and has been ordered to comply with sections 13 and 38 of the *Act* in the future. The landlord has also been cautioned that failure to comply with sections 13 and 38 of the *Act* in the future could lead to a recommendation for an administrative penalty under the *Act*.

The tenant has been granted a monetary order in the amount of \$991.94 comprised of \$750.00 for the double security deposit of \$375.00, plus \$241.94 for the recovery of 10 days loss of use and occupancy of the rental unit as described above. The monetary 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: February 27, 2017

Residential Tenancy Branch