



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for the return of double the security deposit;
- an order that the landlord comply with the *Act*, regulations or the tenancy agreement; and
- recovery of the filing fee paid for this application from the landlord.

The landlords did not appear at the teleconference hearing which lasted 16 minutes. The tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the tenant was given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the landlords did not attend the hearing, service of the tenant's Application and Notice of a Dispute Resolution Hearing (the "Notice of Hearing") (collectively referred to as the "hearing package") were considered.

Service of the Tenant's Application

The tenant testified that she sent each landlord a separate copy of the hearing package by registered mail. The tenant testified that she sent one registered mailing to the female landlord F.L. at the address for service indicated on the tenancy agreement. The tenant testified that she sent the registered mailing to the male landlord S.L. at the return address shown on an envelope that contained a portion of the tenant's security deposit that was returned by the landlord. The male landlord's return address was located in another province. The tenant testified that she sent the hearing package to different addresses as she didn't think that the landlords, who are spouses, still resided at the address indicated on the tenancy agreement.

The tenant testified that the registered mailing that was sent to the female landlord was returned to the tenant. The tenant provided the receipt for the Canada Post Tracking Number. The tenant testified that the registered mailing sent to the male landlord was received by him on January 23, 2017. The tenant provided the Canada Post Tracking Number orally. The online registered mail tracking information supports the undisputed testimony of the tenant with respect to both landlords.

Rule 3.1 of the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) requires the applicant to serve the application hearing package on the respondent within 3 days of it being made available by the Residential Tenancy Branch.

Section 89 (1) of the *Act*, requires an application hearing package sent by registered mail to be sent to the address at which the person resides.

Based upon the evidence before me, I find that there is insufficient evidence to satisfy me that the female landlord resides at the address indicated on the tenancy agreement, where her registered mailing was sent. In making this finding I have taken into consideration the fact that the landlords are spouses and the male landlord received the hearing package at an address located in another province, while the female landlord’s hearing package was returned to the tenant. Therefore, I find that there is insufficient evidence that the female landlord was served in accordance with section 89 of the *Act*. Therefore, I dismiss the tenant’s application with respect to the female landlord F.L. due to insufficient service.

Taking into account that the online registered mail tracking information supports the undisputed testimony of the tenant, I find that there is sufficient evidence that the male landlord was duly served in accordance with section 88 of the *Act* on January 23, 2017.

Preliminary and Procedural Matters

At the start of the hearing, the tenant withdrew her application for an order that the landlord comply with the *Act*, regulations or the tenancy agreement.

Issues to be Decided

- Is the tenant entitled to a monetary order for the return of double the security deposit?
- Is the tenant entitled to a recover the filing fee for their application from the tenant?

Background and Evidence

The tenant testified that she entered into a month to month tenancy agreement which started on August 15, 2010 and ended on November 30, 2016, with the tenant giving notice. Rent was \$1,800 due on the first day of each month. The tenant paid a security deposit in the amount of \$850.00 on August 15, 2010.

The tenant testified that the tenancy ended on November 30, 2016 and the tenant vacated the rental unit. On November 28, 2016, the landlord sent the tenant a congratulatory email with a request to send him her mailing address to return the security deposit. The tenant emailed the landlord her forwarding address on November 29, 2016. The tenant submitted the emails exchanged with the landlord which supported her testimony.

The tenant testified that the landlord mailed the tenant a refund of the security deposit in the amount of \$600.00. It was the return address on the landlord's envelope that alerted the tenant that the landlords have changed addresses. The tenant testified that the balance of the security deposit in the amount of \$250.00 has not been returned by the landlords.

The tenant is seeking a monetary order in the amount of \$1,100.00 for double the amount of the security deposit less the portion of the security deposit that has already been refunded to the tenant.

The tenant is also seeking recovery of the \$100.00 filing fee paid for this Application from the landlord.

Analysis

Based on the undisputed documentary evidence and testimony of the tenant provided during the hearing, and on the balance of probabilities, I find the following.

As the male landlord was served with the application hearing package and did not attend the hearing, I consider this matter to be unopposed by the male landlord S.L. As a result, I find the tenant's application is fully successful as I find the evidence supports the tenant's claim and is reasonable.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

If the landlord fails to comply with section 38(1) of the *Act*, then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address.

Policy Guideline #17 of the Residential Tenancy Branch's Policy Guidelines states that unless the tenant has specifically waived the doubling of the deposit, the Arbitrator will order the return of double the deposit if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing.

Section 71(2)(b) of the *Act* grants the arbitrator the authority to order that a document has been sufficiently served for purposes of the *Act* on a date specified by the Arbitrator.

I find that the tenant sent her forwarding address to landlord S.L. by email which is not sufficient to comply with the requirement that the information be sent in writing pursuant to section 38(1) of the *Act*. Relying upon section 71(2)(b) of the *Act*, I find, however, that the landlord has been sufficiently served with the tenant's forwarding address by email on November 29, 2016 for purposes of the *Act*. In making this determination I have taken into consideration the following factors:

- There is confirmation that the landlord received the tenant's forwarding address by the fact that the tenant received a portion of her security deposit from the landlord at her forwarding address; and
- by forwarding a portion of the security deposit to the tenant at her forwarding address, I find that the landlord accepted the email notice by acting on it.

I find that the tenancy ended on November 30, 2016 and the end of the tenancy is the triggering event. Therefore, I find that the landlord had 15 days after November 30, 2016 to return the security deposit or file an Application for Dispute Resolution to make a claim to retain the security deposit.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. The tenant gave testimony that she has not authorized the landlord to retain any portion of the security deposit nor waived her right to obtain a payment pursuant to section 38 of the *Act* as a result of the tenant's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the value of her security deposit with interest calculated on the original amount only. No interest is payable.

As the tenant's application is successful, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord.

Based on the foregoing, I find that the tenant is entitled to a total monetary award against landlord S.L. in the amount of \$1,200.00 as follows:

Double Security Deposit (\$850.00 x2)	\$1,700.00
Less Portion Returned to Tenant	\$ 600.00
Filing Fee	\$ 100.00
Total Monetary Order	\$ 1,200.00

Conclusion

The tenant's application against landlord F.L. is dismissed without leave to re-apply due to insufficient service.

I ORDER that the landlords have been deemed sufficiently served with the tenant's forwarding address on November 29, 2016 by email sent to the landlord S.L.

Pursuant to section 67 of the *Act*, the tenant is granted a monetary Order in the amount of \$1,200.00 for double the security deposit and the filing fee against landlord S.L. only, which must be served on the landlord as soon as possible. Should the landlord fail to comply with this monetary Order, it 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 6, 2017

Residential Tenancy Branch