



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Application made January 18, 2017: MNSD
Amended February 17, 2017: MNSD; MNDC

Introduction

This is the Tenant's Application for Dispute Resolution seeking return of her security deposit, made January 18, 2017. On February 17, 2017, the Tenant amended her Application to increase her monetary claim by adding a request for compensation for damage or loss.

The Tenant and her advocate signed into the Hearing; however the Landlord did not sign in. The teleconference remained open for 25 minutes.

The Tenant gave affirmed testimony during the Hearing.

The Tenant testified that on January 18, 2017, she mailed the Notice of Hearing documents, including her Application made January 18, 2017, by registered mail, to the Landlord at the Landlord's address for service on the tenancy agreement. She provided the tracking number for the registered package.

The Tenant testified that she hand delivered her Amended Application for Dispute Resolution and copies of documentary evidence in support of her amended Application to the Landlord's work place on February 17, 2017. This location is not where the Landlord carries on business as a landlord. The Tenant testified that the Landlord was not available to serve personally, so she left the package in a closed envelope with another employee. The Tenant provided a "proof of service" document.

I am satisfied that the Landlord was duly served with the Notice of Hearing documents, including the Tenant's Application made January 18, 2017, by registered mail pursuant to the provisions of Section 89(1)(c) of the Act. Service in this manner is deemed to be effected 5 days after mailing the documents.

With respect to the Tenant's Amended Application, I find that there is insufficient evidence that the Landlord received the documents. The "proof of service" document is not signed by the recipient, and there is no indication that the recipient hand delivered the documents to the Landlord. Therefore, the Tenant's application for damages other than the monetary claim described in her initial Application is dismissed with leave to reapply. The Hearing continued in the Landlord's absence with respect to the Tenant's claim for return of the security deposit only.

Issue(s) to be Decided

Is the Tenant entitled to return of the security deposit and compensation pursuant to the provisions of Section 38 of the Act?

Background and Evidence

The Tenant gave the following oral testimony and documentary evidence:

- This tenancy began on November 15, 2016. Monthly rent was \$1,050.00, due on the first day of the month. The Tenant paid a security deposit in the amount of \$525.00.
- On November 19, 2016, the Landlord forcefully and illegally evicted the Tenant from the rental unit. During the course of eviction, the Landlord slammed a door on the Tenant's hand and the police were called and attended at the rental unit.
- The Landlord did not allow the Tenant to live in the rental unit or to gain access to and remove her belongings after November 19, 2017.
- On December 21, 2016, the Tenant sent an e-mail to the Landlord, enclosing her forwarding address and asking for return of the security deposit. The Landlord responded to the e-mail, saying "please do not contact me unless it is done through a lawyer". The Tenant provided a copy of her e-mail attaching her forwarding address and the Landlord's response to her e-mail.
- There was no Condition Inspection report completed.
- The Tenant did not give oral or written permission for the Landlord to keep any of the security deposit.
- The Landlord has not returned the security deposit to the Tenant.

Analysis

I accept the Tenant's undisputed affirmed testimony in its entirety. I find that the tenancy ended on November 19, 2017, when the Landlord evicted the Tenant.

Section 38 deals with how the security deposit is to be administered at the end of a tenancy. Section 38 provides:

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.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must repay a deposit

(a) in the same way as a document may be served under section 88 (c), (d) or (f) [*service of documents*],

(b) by giving the deposit personally to the tenant, or

(c) by using any form of electronic

(i) payment to the tenant, or

(ii) transfer of funds to the tenant.

[reproduced as written]

I find that there is sufficient evidence that the Landlord received the Tenant's forwarding address on December 21, 2016. The Landlord's e-mail, in response to the Tenant's e-mail advising of the forwarding address, was sent by the Landlord on December 21, 2016.

There is no evidence that the Landlord made an Application against the security deposit within 15 days of receipt of the Tenant's forwarding address. In any event, I find that the Landlord extinguished her right to claim against the security deposit pursuant to the provisions of Section 38(5) of the Act.

I find that the Tenant is entitled to a monetary award equal to double the amount of the security deposit, pursuant to the provisions of Section 38(6) of the Act.

Conclusion

The Tenant is successful with respect to her initial claim made January 18, 2017. The Tenants' Application for additional compensation with respect to her Amended Application made February 17, 2017, is dismissed **with leave to reapply**.

I hereby provide the Tenant with a Monetary Order in the amount of **\$1,050.00** representing double the amount of the security deposit, for service upon the Landlord. This Order may be filed in the Provincial Court (Small Claims) 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 03, 2017

Residential Tenancy Branch