



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- a monetary order for the return of double the security deposit; and
- recovery of the filing fee paid for this application from the landlord.

The landlord did not appear at the teleconference hearing which lasted 23 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 landlord did not attend the hearing, service of the tenant's Application and Notice of a Dispute Resolution Hearing (collectively referred to as the "hearing package") were considered.

The tenant testified that the landlord was served with a copy of the tenant's hearing package by registered mail. The tenant testified that the registered mail was sent to the landlord's address on January 13, 2017. The landlord provided the Canada Post Customer Tracking Receipt with the Tracing Number to confirm the mailing. Taking into account the undisputed testimony of the tenant and in accordance with section 89 of and 90 the *Act*, I find that the landlord has been deemed served with a copy of the tenant's hearing package on January 18, 2017, the fifth day after the registered mailing.

Preliminary and Procedural Matters

The tenant is only seeking double the return of his security deposit and recovery of the filing fee paid for their application from the landlord. Therefore, I dismiss the tenant's claim for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement as it is unnecessary.

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 recover the filing fee paid for this application from the landlord?

Background and Evidence

The tenant's evidence established that the tenant entered into a three month fixed term tenancy starting on June 19, 2016 and ending September 19, 2016. The tenant opted to renew the tenancy for one further month and the tenant moved out of the rental unit on October 19, 2016. Rent in the amount of \$1,700.00 was due on the first day of each month. The tenant provided a security deposit in the amount of \$850.00 on June 19, 2016.

The tenant indicated that he provided his new forwarding address in writing to the landlord in a letter dated November 23, 2016. A copy of the tenant's letter was submitted as evidence. The tenant testified that he sent the landlord a copy of the letter by registered mail. A copy of the Canada Post receipt for delivery was submitted by the tenant to confirm delivery of the mailing to the landlord on November 24, 2016.

The tenant testified that the security deposit in the amount of \$850.00 has not been returned by the landlord.

The tenant is seeking a monetary order in the amount of \$1,700.00 for double the amount of the security deposit.

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 landlord was served with the application hearing package and did not attend the hearing, I consider this matter to be unopposed by the landlord. 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.

I find that the tenancy ended on October 19, 2016. I also find that the landlord received the tenant's forwarding address in writing on November 24, 2016 by registered mail. In making this finding I have taken into account the tenant's undisputed testimony and the Canada Post receipt for delivery signed by the landlord.

Based on the foregoing, I find that the triggering event is the date the landlord received the tenant's forwarding address in writing, November 24, 2016. Accordingly, I find that the landlord had 15 days after November 24, 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 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 he has not authorized the landlord to retain any portion of the security deposit nor waived his 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 in the amount of \$1,800.00 as follows:

Double Security Deposit (\$850.00 x2)	\$1,700.00
Filing Fee	\$ 100.00
Total Monetary Order	\$ 1,800.00

Conclusion

I dismiss the tenant's claim for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement as this claim is unnecessary.

Pursuant to section 67 of the *Act*, the tenant is granted a monetary Order in the amount of \$1,800.00 for double the security deposit and the filing fee, 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 06, 2017

Residential Tenancy Branch