



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- a monetary order for return of the pet damage deposit or 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 27 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 (the "Notice of Hearing") were considered.

The tenant testified that she sent the landlord a copy of her Application and Notice of Hearing by registered mail. The tenant testified that she sent the registered mailing to the landlord's address on February 1, 2017. The tenant testified that the registered mailing was returned to her on March 7, 2017. The tenant provided the Canada Post Tracking Number Receipt to confirm the details of the mailing. Taking into account that the online registered mail tracking information supports the undisputed testimony of the tenant and in accordance with sections 89 and 90 of the Act, I find that the landlord has been deemed served with the tenant's Application and Notice of Hearing as of February 6, 2017, the fifth day after the registered mailing.

Preliminary and Procedural Matters

The tenant submitted digital evidence which included a photo of texts between her and the landlord about the deposit. Section 3.10 of the Residential Tenancy Branch Rules of

Procedure indicates that digital evidence includes only photographs, audio recordings, and video recordings. Photographs of printable documents, such as e-mails or text messages, are not acceptable as digital evidence. Therefore, the tenant was permitted to re-submit the texts to the Residential Tenancy Branch by fax, no later than 4:00 p.m. on the date of the hearing. A fax was received within the permitted time frame.

Issues to be Decided

- Is the tenant entitled to a monetary order for return of the pet damage deposit or security deposit?
- Is the tenant entitled to recovery of the filing fee paid for this application from the landlord?

Background

The undisputed testimony of the tenant established that the tenant and a co-tenant entered into a fixed term tenancy starting on September 1, 2015 and ending on July 15, 2016. The tenant testified that she moved out of the rental unit on April 16, 2016 and the co-tenant moved out of the rental unit on July 15, 2016. Rent in the amount of \$850.00 was due on the first day of each month. The tenants paid a security deposit in the amount of \$425.00 on or before the tenancy started.

The tenant testified that on June 27, 2016 she sent a text to the landlord with her forwarding address and requested the deposit. The tenant testified that on November 27, 2016 she sent a second text to the landlord with her forwarding address and requested the deposit. On November 30, 2016 the landlord replied by text indicating that he had already posted the tenant's cheque to the address the tenant had given him. The tenant testified that on January 24, 2017 she sent the landlord a text informing him that she hadn't received the deposit. The tenant testified that she did not receive any further response from the landlord. The tenant submitted a copy of these texts.

The tenant testified that she did not authorize the landlord to retain any portion of the security deposit.

The tenant is seeking a monetary order in the amount of \$425.00 for the return of the security deposit.

The tenant is also seeking recovery of the \$100.00 filing fee for their application from the landlord.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

Section 38(1) of the *Act* requires a landlord to either return the security or pet damage deposit or file an Application to claim against it, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, whichever is the latest.

Pursuant to section 38(6) of the *Act*, if the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return double the tenant's security deposit, plus applicable interest.

Policy Guideline #17 of the Residential Tenancy Branch's Policy Guidelines explains 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.

The forwarding address must be given to the landlord in accordance with section 88 of the *Act*. Section 88 of the Act lists the following ways documents must be given or served on the landlord as follows:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person carries on business as a landlord;
- ...
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person carries on business as a landlord;

- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1); and
- (j) by any other means of service prescribed in the regulations.

Section 71(2)(c) of the *Act* allows an Arbitrator to determine that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this *Act*.

As the landlord was served with the Notice of Hearing 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.

I find that the tenant provided a security deposit in the amount of \$425.00 on or before the tenancy started.

I find that the tenant sent her forwarding address to the landlord on June 27, 2017 in writing by text. While s.88 of the *Act* does not authorize texts as a method of delivery, pursuant to section 71(2)(c) of the *Act*, I find that the landlord was sufficiently served with the tenant's forwarding address by text. In making this finding, I have taken into consideration the fact that the landlord acknowledged receipt of the forwarding address in his text to the tenant. Therefore, I am satisfied that the landlord received the forwarding address by text.

I find that the tenancy ended on July 15, 2016. As the end of the tenancy occurred after receipt of the tenant's forwarding address, I find that the landlord was required to repay the security deposit or make an Application for dispute resolution to claim against the deposit within 15 days of July 15, 2016.

In this case, I find that the landlord has not returned the tenant's security deposit in full within 15 days of the end of the tenancy. I also find that there is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. I find that the landlord has not obtained the tenant's written authorization at the end of the tenancy to retain any portion of the tenant's security deposit. I also find that the tenant did not specifically waive the doubling of her deposit in her Application or at the hearing.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the original security deposit with interest calculated on the original amount only. No interest is payable over this period.

As the tenant has been successful in their application, I find that the tenant is also entitled to recover their filing fee from the landlord.

Based upon the foregoing, I find the tenant is entitled to a monetary order in the total amount of \$950.00 as follows:

Item	Amount
Return of Security Deposit	\$ 425.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	\$ 425.00
Filing Fee	\$ 100.00
Total Monetary Order	\$ 950.00

Conclusion

The tenant's application is successful.

The tenant is granted a monetary Order in the amount of \$950.00 which is for the filing fee and double the amount of the tenant's security deposit. This monetary Order 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 Orders 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: April 10, 2017

Residential Tenancy Branch