



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

The tenant applied for authorization to obtain the return of his security deposit pursuant to section 38 of the *Residential Tenancy Act*.

The landlord/respondent did not attend this hearing, although the teleconference continued until 11:15 a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 11:00 a.m. The tenant/applicant attended the hearing and was given a full opportunity to be heard, to present testimony, and to make submissions.

The tenant testified that he served the landlord with his Application for Dispute Resolution (“ADR”) by registered mail on March 9, 2017. The tenant testified that he sent the registered mail package to the address for the landlord provided on the residential tenancy agreement. He also testified that he confirmed the management company/landlord’s mailing address by looking up the contact information online. The tenant submitted copies of the Canada Post Tracking Number and Tracking Information for this mailing. The tracking information for the registered mailing of the tenant’s ADR showed that the package was refused on April 8, 2016 and returned to the sender/the tenant. I find that the tenant’s ADR was deemed served to the landlord, in accordance with section 89 and 90 of the Act, on April 13, 2017 (5 days after it was refused by the landlord).

The tenant also submitted an evidence package received by the Residential Tenancy Branch on May 9, 2017. The tenant testified that he sent this package by registered mail and that the tracking information shows that this package was received by the landlord. Based on the undisputed testimony of the tenant and the tracking information submitted for this hearing, I find that the landlord was deemed served on May 14, 2017 (5 days after its registered mailing) in accordance with the Act.

Issue(s) to be Decided

Is the tenant entitled to the return of her security deposit?

Is the tenant entitled to an amount equivalent to her deposit for the landlord's contravention of the Act?

Background and Evidence

This tenancy began on May 1, 2013 with successive 12 month fixed term tenancy agreements. The rental amount of \$2200.00 was payable on the 1st of each month. The tenant testified that he gave written notice to the landlord that he intended to vacate the rental unit on December 18, 2016 as a result of a desire to be in a certain school district. The tenant vacated the rental unit on January 31, 2017. The tenant provided evidence that the landlord continues to retain the tenant's \$1100.00 security deposit of \$1100.00 that was paid prior to the outset of the tenancy (April 2013).

The tenant testified that he and his family advised the landlord in writing that they would vacate the rental unit before the end of the fixed term. The tenant provided copies of emails and written correspondence to show that he provided the landlord with sufficient notice. Further, he provided the email correspondence of the landlord agreeing to the date that the tenants would vacate the rental unit. He testified that they ultimately vacated the rental unit on January 31, 2017. The tenant testified that the landlord agreed to this date as the end of the tenancy.

The tenant testified that he participated in 2 separate move-out walk through inspections with the landlord's brother. The tenant testified that no condition inspection report was created. He testified that the landlord's brother said, "everything looks okay". He submitted a copy of other email correspondence with the landlord. He testified that he had provided his forwarding address in writing at one of the move out inspections to the landlord's representative but that he wrote an email on February 5, 2017 with his forwarding address to have proof of provision and receipt of his forwarding address. He provided a copy of this email and the landlord's response that stated she would email transfer the security deposit amount within the week.

The tenant testified that the forwarding address he provided is his work address - he testified that he provided the landlord with this address during the tenancy and again at the end of the tenancy. He testified that he regularly communicated with the landlord by email over the course of the tenancy and that the landlord still have his active phone number.

The tenant testified that the landlord indicated she intended to renovate the unit after the tenant and his family moved out. He referred to the email correspondence with the landlord to show that she confirmed she was upgrading the unit after the end of his tenancy. The tenant testified that, when he moved in, the walk through had gone smoothly. However, he testified that, at move out, he felt the landlord took advantage of him and failed to meet her obligations as a landlord.

The landlord did not attend this hearing and made no application to the Residential Tenancy Branch to retain this deposit. The tenant sought return of his entire security deposit.

Analysis

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), 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. In this case, the landlord was informed of the forwarding address in writing prior to the end of the tenancy. The tenancy ended on January 31, 2017. The tenant provided a second copy of the forwarding address by email on February 5, 2017. I find that the landlord had 15 days after January 31, 2017 to take one of the actions outlined above.

Section 38(4)(a) of the Act also allows a landlord to retain an amount from a security deposit if "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." The tenant testified that he did not agree to allow the landlord to retain any portion of the security deposit. As there is no evidence that the tenant has given the landlord written authorization at the end of this tenancy to retain any portion of his deposit, section 38(4)(a) of the Act does not apply to the tenant's security deposit.

The tenant seeks return of his \$1100.00 security deposit. The landlord did not apply to the Residential Tenancy Branch to retain the tenant's deposit. The landlord did not attend this hearing to dispute the tenant's evidence. I have found there is sufficient proof

that the landlord was deemed served with the tenant's ADR and with the tenant's evidence package in accordance with the Act. Therefore, I find that the tenant is entitled to a monetary order including \$1100.00 for the return of the full amount of his security damage deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, 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;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

Based on the undisputed testimony and supporting documentary evidence of the tenant 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 sworn testimony that he has not waived his right to obtain a payment pursuant to section 38 of the Act owing as a result of the landlord'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 total monetary order amounting to double the value of her security deposit with any interest calculated on the original amount only. No interest is payable for this period.

Conclusion

I issue a monetary Order in favour of the tenant as follows:

Item	Amount
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Return of Security Deposit	\$1100.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	1100.00
Total Monetary Order	\$2200.00

The tenant is provided with formal Orders in the above terms. Should the landlord(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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: May 24, 2017

Residential Tenancy Branch