



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

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

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38.

The landlord did not attend this hearing, which lasted approximately 23 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that the landlord was served with the tenant's application for dispute resolution hearing package on November 23, 2016, by way of registered mail to the landlord's residence. The tenant claimed that the landlord lived in the upper portion of the same house where the tenant was renting the basement. The tenant provided a Canada Post tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's application on November 28, 2016, five days after its registered mailing.

Issue to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of the security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Background and Evidence

The tenant testified regarding the following facts. This tenancy began on September 1, 2014 and ended on August 31, 2016. Monthly rent in the amount of \$1,100.00 was payable on the first day of each month. A security deposit of \$550.00 was paid and the

landlord continues to retain \$164.74 from the deposit. The tenant shared the rental unit with someone else and they each contributed \$550.00 towards monthly rent and \$275.00 each towards the security deposit. The landlord returned \$207.63 to one tenant and \$177.63 to the other tenant from the deposit. A written tenancy agreement was signed by both parties but no copy was provided for this hearing.

The tenant testified that move-in and move-out condition inspection reports were completed for this tenancy. The tenant said that he provided a written forwarding address to the landlord by way of a note that was posted to the landlord's residence door on October 29, 2016. The tenant did not provide a copy of this note. He claimed that he sent a text message to his father on October 29, 2016, indicating that he had posted a note to the landlord's door with his forwarding address and cautioning the landlord that he would file a claim if the landlord did not respond. He explained that the landlord did not have written permission to keep any amount from his security deposit. The tenant confirmed that he did not receive an application for dispute resolution from the landlord to retain any amount from the security deposit.

The tenant seeks a return of double the amount of his security deposit, totalling \$1,100.00, minus the \$385.26 portion returned to him by the landlord.

The tenant also sought to recover the \$100.00 filing fee paid for this application. I notified him that he had not included this claim in his original application so I could not deal with it because the landlord did not have notice of it and the landlord did not appear at this hearing in order to consent to an amendment to the tenant's application.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the undisputed testimony of the tenant. The tenancy ended on August 31, 2016. The tenant provided a written forwarding address

to the landlord by way of posting a note to the landlord's residence door on October 29, 2016. I find that the landlord was deemed served with this note on November 1, 2016, three days after its posting. Although the tenant did not provide a copy of this note, I accept his undisputed testimony at this hearing. The tenant did not give the landlord written permission to retain any amount from his security deposit. The landlord did not return the full deposit of \$550.00, he only returned a portion totaling \$385.26. The landlord did not make an application for dispute resolution to claim against the deposit.

The landlord continues to hold a portion of the tenant's security deposit. Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit. In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to receive double the value of his security deposit, totalling \$1,100.00, minus the portion already returned to him of \$385.26, leaving a balance of \$714.74.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$714.74 against the landlord. The tenant is provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order 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: May 26, 2017

Residential Tenancy Branch