Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Spa Rivier
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, O, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order. The hearing was conducted via teleconference and was attended by the tenant and the landlord.

The tenant testified the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on March 9, 2017 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed. The landlord could not recall the specific date she received the Application.

Based on the testimony of both parties, I find that the landlord is deemed to have received the tenant's Application for Dispute Resolution on March 14, 2017.

I note that in a Decision date February 1, 2017 in response to the tenant's original Application for Dispute Resolution seeking return of his deposit the arbitrator wrote:

> "I find also that section 38 of the Act provides a tenant must provide their forwarding address in writing to the landlord. I find the tenant providing his daughter's address is insufficient to meet this requirement as the landlord said she did not know it was his forwarding address or that he wanted his deposit returned to that address"

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled a monetary order for return of the security and pet damage deposits and to recover the filing fee from the landlord

for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*..

Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on November 2, 2015 for a month to month tenancy beginning on October 31, 2015 for a monthly rent of $1,350.00 due on the 1st of each month with a security deposit of $675.00 paid and a pet damage deposit of $300.00 paid. The parties agreed the tenancy ended on October 30, 2016.

The tenant submitted that he sent the landlord a text message on November 12, 2016 advising her of his forwarding address. In support of this the tenant submitted several text messages beginning October 3, 2016 and ending November 12, 2016.

I note that the landlord has responded to all of the tenant's text messages with the exception of the November 12, 2016 message. I also note that the landlord informed the tenant in these text messages that she did not intend to return his deposits because of the condition of the yard and house.

The landlord submitted that she had not received the text message containing the tenant's forwarding address. I note the address provided in the text message and in the tenant's Application for Dispute Resolution are the same address.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

I am satisfied that the tenant provided the landlord with his forwarding address by text message on October 12, 2016. I find, on a balance of probabilities, that since the landlord clearly responded to all previous text messages regarding the condition of the rental unit at the end of the tenancy she also received the text message of October 12, 2016.

Regardless of the finding of the arbitrator in the previous decision that “the tenant providing his daughter’s address is insufficient to meet this requirement as the landlord said she did not know it was his forwarding address or that he wanted his deposit returned to that address”, I find that the tenant’s specific wording in the text identified the address as his forwarding address, which is sufficient to trigger the landlord’s obligations to either return the deposits or file a claim against them within 15 days, pursuant to Section 38(1).

Furthermore, I find the landlord was also provided with the tenant’s forwarding address on March 14, 2017, when she received his Application for Dispute Resolution for this claim.

I note the landlord submitted evidence of her assertions that she had to clean the house and yard but she did not file her own Application for Dispute Resolution seeking to retain the deposit or any other amounts or return either of the deposits, since receiving this Application. I also note the total amount the landlord asserted was owed to her for cleaning the yard and house; a lock change and supplies totalled only $664.00 while the deposits totalled $975.00 and yet the landlord has not even returned the balance of $311.00 to the tenant.

As the parties attended a previous hearing on these matters and the issue of the provision of a forwarding address was discussed, I am satisfied that the landlord would have been aware when she received the tenant’s Application on March 14, 2017 that the address provided in the Application was his forwarding address; as this address has not changed from the one he provided to her on November 12, 2016.

For these reasons, I find the landlord received the tenant’s forwarding address after November 12, 2016 and no later than March 14, 2017. As a result I find the landlord was required to either return the deposits, in full, or file an Application for Dispute Resolution no later March 29, 2017 to comply with Section 38(1).

As there is no evidence before me that the landlord filed an Application for Dispute Resolution claiming against the deposits or that the deposits were returned to the tenant in full, I find the landlord has failed to comply with the Section 38(1) and the tenant is entitled to double the amount of both deposits, pursuant to Section 38(6).

I note that this finding does not prevent the landlord from filing a claim against the tenant for any losses she believes she has suffered as a result of this tenancy within any limitations set forth in the *Act*.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **$2,050.00** comprised of $1,950.00 double the amounts of the security deposit and pet damage deposit and the $100.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: June 06, 2017

Residential Tenancy Branch