



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

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.

The landlord did not appear at the teleconference hearing which lasted 32 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 Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered.

The tenant testified that she sent the landlord a copy of the Notice of Hearing by registered mail. The tenant testified that she sent the registered mailing to the landlord's address shown on the tenancy agreement on March 27, 2017. Taking into account the 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 Notice of Hearing as of April 1, 2017, the fifth day after the registered mailing.

Issue to be Decided

- Is the tenant entitled to a monetary order for return of pet damage deposit or security deposit?

Background and Evidence

The testimony of the tenant established that the tenant entered into a fixed term tenancy starting on August 15, 2014 and ending on August 31, 2015. At the end of the fixed term the tenancy continued on a month to month basis. Rent in the amount of \$800.00 was due on the first day of each month. The tenant paid a security deposit in the amount of \$400.00 on August 5, 2014. The tenancy ended on April 1, 2015 which was the date the tenant moved out.

The tenant testified that the parties had arranged to meet at the rental unit on April 1, 2015 to complete a move out inspection. The tenant testified that she attended the unit for the move out inspection but the landlord did not attend.

The tenant testified that she provided the landlord with her forwarding address in an email dated August 11, 2015 asking for her damage deposit returned. The tenant submitted a copy of the email along with an email response from the landlord as proof that the landlord received the tenant's email. The tenant testified that the parties regularly communicated through emails and texts.

The tenant testified that the landlord has not yet returned the security deposit. The tenant further testified that she did not authorize the landlord to keep the security deposit.

Although the tenant's monetary claim is for the amount of the deposit in the sum of \$400.00, the tenant indicated that she was not waiving entitlement to the return of double the deposit.

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.

Section 38(4)(a) of the *Act* allows a landlord to retain an amount from a security or pet damage 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."

Pursuant to section 38(6) of the *Act*, 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 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 \$400.00 on August 5, 2014. I find that the tenancy ended on April 1, 2015.

I find that the tenant sent her forwarding address to the landlord on August 11, 2015 in writing, by email. While s.88 of the *Act* does not authorize email 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. In making this finding, I have taken into consideration the fact that the landlord responded to the tenant's email sent on August 11, 2015. Therefore, I find that there is sufficient evidence that the landlord received the tenant's forwarding address on August 11, 2015.

As the landlord received the tenant's forwarding address after the end of the tenancy, 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 August 11, 2015. I find that the landlord has not returned the tenant's security deposit in full within 15 days of receiving the tenant's forwarding address. I find that the landlord has not applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. Furthermore, 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.

Based upon the foregoing, and in accordance with section 38 of the *Act*, I find that the tenant is 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. Therefore, I find the tenant is entitled to a monetary order in the amount of \$800.00.

Conclusion

The tenant's application is successful.

The tenant is granted a monetary Order in the amount of \$800.00 for double the amount of the tenant's security deposit as a result of the landlord's failure to comply with section 38 of the *Act*. 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: June 09, 2017

Residential Tenancy Branch