



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, O, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant requested return of double the security deposit paid, other unspecified relief and to recover the filing fee.

The hearing was conducted by teleconference on June 15, 2017. Only the Tenant called into the hearing. He gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified that he served the Landlord with the Notice of Hearing and the Application on December 22, 2016 by registered mail to the address of the Landlord as provided for on the tenancy agreement (a review of the residential tenancy agreement confirms this). A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. The Tenant confirmed that the package was returned as unclaimed.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of December 27, 2016 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Tenant's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit paid?
2. Should the Tenant recover the filing fee paid for his Application for Dispute Resolution?

Background and Evidence

The Tenant testified that the tenancy began August 15, 2016. Monthly rent was payable in the amount of \$2,400.00. The Tenant testified that they paid a security deposit in the amount of \$2,400.00 and a \$300.00 pet damage deposit. A copy of the residential tenancy agreement was provided in evidence and confirmed these amounts as being paid on August 8, 2016. Further, the Tenant confirmed that his company paid the security deposit on his behalf by way of a bank transfer and provided a printout confirming same.

The Tenant stated that he paid his rent to the Landlord directly.

The Tenant stated that the Landlord did not do a formal/written move in or move out inspection although an informal "walk through was done" with the Landlord's agent, T.R..

The Tenant testified that he moved out of the rental unit on November 15, 2016.

The Tenant confirmed that he gave agent, T.R., his forwarding address on a piece of paper when they did the informal walk through on November 16, 2016. He also stated that he sent the Landlord his forwarding address in writing by email on December 13, 2016. A copy of that email was provided in evidence. The Tenant stated that the Landlord did not respond to the December 13, 2016 email.

Copies of emails provided in evidence by the Tenant confirm that the Landlord and Tenant regularly communicated by email, including on October 9, 2016, December 13, 2016, and December 22, 20156.

The Tenant submitted that the Landlord received his December 13, 2016 email with his forwarding address and request for return of his deposits and simply ignored his request as the Landlord believed he was entitled to retain the funds.

The Tenant confirmed that the Landlord did not make an application for dispute resolution.

Analysis

The Tenant seeks return of double the security and pet damage deposit paid pursuant to section 38 of the *Residential Tenancy Act* which reads as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) 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, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

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

I accept the Tenant undisputed evidence that he did not agree to the Landlord retaining any portion of the security deposit or pet damage deposit.

I find that the Landlord received the Tenants forwarding address in writing on December 13, 2016. While email is normally not considered sufficient for the purposes of satisfying this requirement, I find that the Landlord regularly communicated by email with the Tenant, both before and after the December 13, 2016 email, and simply chose not to respond to the Tenant's email wherein the Tenant provided his forwarding address and requested his deposits. Further, the contents of the Landlord's response indicate he believed he was entitled to retain the funds as he alleged the Tenant broke the lease and caused him to suffer a rental loss.

I also find that the Landlord failed to apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required under section 38(1) of the *Act*.

Further, by failing to perform incoming or outgoing condition inspection reports in accordance with the *Act*, the Landlord also extinguished his right to claim against the security deposit and pet damage deposit for damages, pursuant to sections 24(2) and 36(2) of the *Act*.

The security deposit is held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator. If the Landlord believed he was entitled to monetary compensation from the Tenant, he must either

obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing him to retain a portion of the Tenant's security deposit. Here the Landlord did not have any authority under the *Act* to keep any portion of the security deposit.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlords pay the Tenants the sum of **\$5,500.00**, comprised of double the security deposit ($2 \times \$2,400.00 = \$4,800.00$) and double the pet damage deposit ($2 \times \$300.00 = \600.00) and the \$100.00 fee for filing this Application.

I also note the Landlord requested a security deposit in the amount of a full months' rent which is contrary to section 19 of the *Act*; for greater clarity I reproduce that section as follows:

Limits on amount of deposits

- 19** (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.
- (2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Conclusion

The Tenants is given a formal Monetary Order in the amount of **\$5,500.00** and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the 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: June 28, 2017

Residential Tenancy Branch