



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "*Act*"). The tenant applied for a monetary order for the return of double her security deposit and pet damage deposit, and to recover the cost of the filing fee.

The tenant attended the teleconference hearing. The tenant gave affirmed testimony, was provided the opportunity to present her evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), the Application for Dispute Resolution (the "Application") and documentary evidence were considered. The tenant provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the tenant by personal service on March 23, 2017 in the early afternoon at her new address that the landlord attended. The tenant confirmed that she served the amendment on the same date also as she only served the landlord once as she waited until filing her amendment before serving the landlord. Based on the evidence before me, and without any evidence before me to prove to the contrary, I accept the tenant's testimony that she served the landlord personally on March 23, 2017. As the landlord did not attend the teleconference hearing, the hearing continued without the landlord present as I am satisfied that the landlord was sufficiently served under the *Act*.

Issue to be Decided

- Is the tenant entitled to the return of her security deposit and pet damage deposit under the *Act* and if so, should either deposit be doubled pursuant to section 38 of the *Act*?

Background and Evidence

The tenant submitted a copy of the tenancy agreement in evidence. According to the tenancy agreement and the tenant's testimony the tenant paid a security deposit of \$700.00 and a pet damage deposit of \$700.00 in March 2016 when a fixed term tenancy started and monthly rent was \$1,400.00 per month. The fixed term tenancy reverted to a month to month tenancy after September 1, 2016. The tenant stated that while the tenancy agreement said "bsmt" that was an inadvertent error on the part of the landlord and that she was actually renting the main portion of the house and not the basement suite.

The tenant affirmed that she received a 2 Month Notice to End Tenancy for Landlord's Use of Property dated January 30, 2017 (the "2 Month Notice"). The 2 Month Notice had an effective vacancy date of March 30, 2017 which the tenant did not dispute and eventually provided a written 10 day notice to end tenancy to the landlord dated February 16, 2017 advising the landlord that she would be vacating the rental unit early on February 28, 2017. The tenant submitted a copy of the February 16, 2017 10 day notice which also contained the tenant's written forwarding address (the "written forwarding address"). The tenant affirmed that she personally served the landlord with her written forwarding address when he attended the rental unit on February 16, 2017. The tenant testified that she vacated the rental unit on February 28, 2017.

The tenant testified that while the landlord paid her \$1,400.00 in compensation for February 2017 rent that she had paid at the start of February 2017 the landlord has not returned her \$700.00 security deposit or her \$700.00 pet damage deposit. The tenant referred to copies of emails submitted in evidence which supports the tenant's testimony.

The tenant testified that she did not agree in writing at any time to surrender any portion of either of her deposits to the landlord. The tenant also confirmed that she was not willing to waive any doubling of the security deposit or pet damage deposit under the *Act* if she was so entitled to double the amount of either deposit.

Analysis

Based on the above, and the tenant's undisputed documentary evidence and testimony and on a balance of probabilities, I find that the landlord has breached of section 38 of the *Act*.

Firstly, I note that I am satisfied that the landlord was served with the Notice of Hearing, Application and documentary evidence and did not attend the hearing which I find results in this tenant's Application being unopposed by the landlord. Secondly, there was no evidence before me to support that the tenant had agreed in writing that the landlord could retain any portion of the tenant's \$700.00 security deposit or \$700.00 pet damage deposit, which has accrued no interest to date. Thirdly, there was also no evidence before me to show that the landlord applied for dispute resolution, within 15 days of the end of the tenancy date of February 28, 2017 which is later than the written forwarding address dated February 16, 2017. Section 38 of the *Act* applies and states:

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.

(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.

[My emphasis added]

Based on the above, I find the landlord breached section 38 of the *Act* by failing to apply for dispute resolution or returning the tenant's security deposit and pet damage deposit in full 15 days after February 28, 2017 which is the end of tenancy date.

The security deposit and pet damage deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep either of the deposits because they feel they are entitled to it or are justified to keep it. The landlord may only keep all or a portion of the deposits under the authority of the *Act*, such as an order from an arbitrator, or the written agreement of the tenant. In the matter before me, I find the landlord did not have any authority under the *Act* to keep any portion of either deposit and did not return either deposit to the tenant within 15 days of February 28, 2017 as required by the *Act*.

Section 38(6) of the *Act* provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant **double** the amount of the security deposit and pet damage deposit. The legislation does not provide any flexibility on this issue. As a result, I grant the tenant **\$2,800.00** which is double the original security deposit of \$700.00 and double the original pet damage deposit of \$700.00.

As the tenant's application was successful, I also grant the tenant **\$100.00** for the full recovery of the cost of the filing fee under pursuant to section 72 of the *Act*.

Based on the above and pursuant to section 67 of the *Act*, I grant the tenant a total monetary order in the amount of **\$2,900.00**.

Given the above, I also make the following order:

I ORDER the landlord to comply with section 38 of the *Act* in the future. Failure to do so could lead to a recommendation for an administrative penalty under the *Act*. The maximum penalty for an administrative penalty under section 94.2 of the *Act* is \$5,000.00 per day and may be imposed for each day the contravention or failure continues.

Conclusion

The tenant's application is fully successful.

The landlord has breached section 38 of the *Act* and has been ordered to comply with section 38 of the *Act* in the future. The landlord has also been cautioned that failure to

comply with section 38 of the *Act* in the future could lead to a recommendation for an administrative penalty under the *Act*.

The tenant has been granted a monetary order in the amount of \$2,900.00 as described above. The monetary order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order 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: August 17, 2017

Residential Tenancy Branch