



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed on June 20, 2017 wherein she sought return of her security deposit and recovery of the filing fee.

The hearing was conducted by teleconference on December 5, 2017. Only the Tenant called into the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified that she served the Landlord with the Notice of Hearing and the Application on June 23, 2017 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. The tenant also submitted the package to the branch which confirmed that the package was refused by the Landlord.

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 June 28, 2017 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 Landlord/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 her security deposit?
2. Should the Landlord be ordered to comply with the *Residential Tenancy Act*, the *Regulation* and/or the residential tenancy agreement?
3. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified that the tenancy began August 1, 2015. Monthly rent was payable in the amount of \$1,200.00. The Tenant paid a security deposit in the amount of \$600.00 and a \$600.00 pet damage deposit.

The Tenant submitted that she participated in the move in and move out condition inspection.

The Tenant moved from the rental unit on April 30, 2017. On May 9, 2017 the Tenant sent a text message to the Landlord with her forwarding address. He responded to that message on May 15, 2017 wherein he stated that he sent out her security deposit the previous Friday. The Tenant confirmed that she received a letter from him with a letter explaining why he retained the funds, and there was no cheque.

The Tenant also sent her forwarding address to the Landlord by registered mail on May 23, 2017. A copy of this letter was provided in evidence, as well as a copy of the receipt and tracking number for the registered mail.

The Tenant testified that the Landlord failed to make an application for dispute resolution for authority to retain the Tenant's security deposit.

The Tenant also testified that she did not agree that the Landlord could retain any of her deposit.

Analysis

The Tenant applies for return of her security and pet damage deposit pursuant to section 38 of the *Residential Tenancy Act* which provides 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's undisputed evidence that she did not agree to the Landlord retaining any portion of their security deposit.

I find that the Landlord received the Tenants forwarding address in writing on May 9, 2017 when he confirmed receipt of her text message. I also find that information was sent to him by registered mail.

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*.

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 believes he is entitled to monetary compensation from the Tenant, he was required to 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 sections 38(1), 38(6), 62(3) 67 and 72 of the *Act*, that the Landlord pay the Tenants the sum of **\$2,500.00**, comprised of double the security deposit (2 x \$1,200.00) as well as recovery of the \$100.00 fee for filing this Application.

Conclusion

The Tenant is given a formal Monetary Order in the amount of **\$2,500.00** 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: December 05, 2017

Residential Tenancy Branch