



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for: authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62. The tenant's application for an order that the landlord to comply with the Act by returning the security deposit is moot and is dismissed.

The landlord/respondent did not attend this hearing, although I waited until 1:58 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 p.m. The tenant/applicant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The tenant provided evidence that he served the landlord with his Application for Dispute Resolution hearing package ("ADR") on August 12, 2017. The tenant submitted the Canada Post receipt for the registered mailing as well as the tracking information. Based on the undisputed testimony and evidence of the tenant, I accept that the landlord was deemed served with the tenant's ADR on August 15, 2017 (5 days after the registered mailing by the tenant).

Issue(s) to be Decided

Is the tenant entitled to the return of his security deposit?

Is the tenant entitled to an amount equivalent to his deposit for the landlord's contravention of section 38 of the *Act*?

This tenancy began on June 30, 2017 and was for scheduled for a fixed 1 month term after which time the parties would agree whether the tenancy would continue. The rental

amount of \$1000.00 was to be payable on the first of each month. The tenant testified that he paid a \$500.00 cash security deposit prior to the outset of the tenancy (June 29, 2017). He sought the return of the deposit in his application. He also sought an amount equivalent to his deposit (\$500.00) as he testified that the landlord had not returned his deposit in accordance with the Act.

The tenant testified that, when he began his move-in to the rental unit on June 30, 2017, he began to have apprehensions about living in the rental unit. He testified that the unit was filthy. He testified that the rental unit was furnished but it was not clean at all. He testified that items including the mattress and sheets were soiled and stained. The tenant advised the landlord that he was dissatisfied and, when the landlord was not able to address his concerns about the condition of the unit, the landlord told him that he could move out and have his security deposit back.

The tenant testified that he never finished moving in and, after seeking advice he provided his forwarding address to the landlord in writing on July 6, 2017. He provided the forwarding address as well as the key to the rental unit back to the landlord on July 6, 2017. The tenant submitted a copy of the letter (dated July 5, 2017) given to the landlord with his forwarding address.

The tenant provided email correspondence between himself and the landlord that began on June 28, 2017. On that date, the parties arranged to meet to view the rental unit. The tenant testified that, at that point, the previous tenant had not vacated the rental unit. On July 3, 2017, the landlord wrote to the tenant to say that he was unhappy that the tenant had told him he didn't want to stay in the rental unit "just after moving in". He wrote that he understood the tenant's concerns and had offered solutions. He wrote that the other two applicants for the unit have now found other places to live. He wrote that, as the tenant had not paid rent, he requested the immediate return of the key to the rental unit. He wrote that he would phone the Residential Tenancy Branch the next day and get information regarding the tenant's security deposit and his loss of rental income. He also indicated he wished to speak to the tenant in person to resolve the matter of the security deposit and the return of the keys to the rental unit.

The tenant testified that the landlord seemed understanding and that the landlord had agreed to return his deposit however the landlord has yet to do so.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address.

In this case, the landlord was informed of the forwarding address in writing on July 6, 2017. The landlord has not applied to retain the tenant's security deposit. As the tenancy had ended as of July 6, 2017 when the tenant both provided his forwarding address and returned the landlord's key to the rental unit, the landlord had 15 days after July 6, 2017 to either make an application or return the tenant's security deposit as outlined above.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security 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." The tenant testified that he did not agree to allow the landlord to retain any portion of his security deposit. There is no evidence that the tenant gave the landlord written authorization at the end of this tenancy to retain any portion of his security deposit. The tenant provided evidence, in his letter and in his email that he sought the return of his security deposit from the landlord. Therefore, section 38(4)(a) of the *Act* does not apply to the tenant's security deposit.

The tenant seeks return of his security deposit. The landlord did not make an application to retain the security deposit. I have found that there is sufficient proof that the landlord was deemed served in accordance with the *Act*. Given that the landlord is or should be aware of this application, that he was advised of the tenant's forwarding address and that the tenancy has ended, I find that the tenant is entitled to a monetary order including \$500.00 for the return of the full amount of his security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, 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;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

Based on the undisputed evidence of the tenant before me and as stated above, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. The tenant gave undisputed testimony supported by documentary evidence that he has not waived his right to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a total monetary order amounting to double the value of his security deposit with any interest calculated on the original amount only. No interest is payable for this period.

Conclusion

I issue a monetary Order in favour of the tenant as follows:

Item	Amount
Return of Security Deposit	\$500.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	500.00
Total Monetary Order	\$1000.00

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this 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: February 26, 2018

Residential Tenancy Branch