



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought return of his security deposit.

The teleconference hearing was scheduled for 1:30 p.m. on this date. The line was monitored for 20 minutes and the only person who called in was the Tenant. As the Landlord did not attend service of the Notice of Hearing and Application were considered.

The Tenant testified that he sent the hearing package to the Landlord at the rental unit on August 25, 2017. He confirmed that during the tenancy the Landlord attended the rental unit to retrieve rent cheques. He further confirmed that the Landlord did not provide an address for service.

For the purposes of section 89(1)(c) of the *Residential Tenancy Act*, I find that the Landlord carried on business as a Landlord at the rental unit. Section 90 of the *Act* provides that documents served by registered mail are deemed served five days later accordingly, I find that the Landlord was served as of August 30, 2017 I therefore proceeded in the Landlord's absence.

I also accept the Tenant's evidence that he sent an email to the Landlord to confirm that he had applied for dispute resolution and that he had sent the hearing package to the Landlord by registered mail to the rental unit address. I find that the parties regularly communicated by email during the tenancy.

The Tenant noted the Landlord's email address in the name section of his Application for Dispute Resolution; pursuant to section 64(3)(c) of the *Act*, I amend the Tenant's application to remove the Landlord's email address from the Landlord's name.

Issue to be Decided

1. Is the Tenant entitled to an order for return of his security deposit?

Background and Evidence

The Tenant testified that his tenancy began November 1, 2007. He provided the Landlord with a \$900.00 security deposit.

Pursuant to the deposit rate calculator, the \$900.00 security deposit has accrued \$15.79 in interest such that the Landlord continues to hold \$915.79 in trust for the benefit of the Tenant.

The Tenant testified that he moved from the rental unit as of July 29, 2017. He stated that the Landlord asked if they could move out early to facilitate the new renters moving in. The Tenant further testified that the Landlord did not perform a move out condition inspection report at the time the tenancy ended. The Tenant provided his forwarding address to the Landlord upon vacating the rental unit.

The Tenant then emailed the Landlord to ask for return of the deposit. He stated that in response the Landlord suggested that he should be able to retain the funds as he believed the rental unit required repairs. The Tenant informed the Landlord that an inspection had not been done, that the new renters had moved in and that he had lived in the rental unit for 10 years such that any "damage" was merely normal wear and tear. The Tenant stated that the Landlord continued to insist he was retaining the deposit to which the Tenant responded that he would be apply for dispute resolution a the Residential Tenancy Branch.

The Tenant confirmed that he was not served with an application by the Landlord.

The Tenant applied for dispute resolution on August 15, 2017.

Analysis

The Tenant applies for an Order that the Landlord comply with the *Act*, and return his security deposit. Such applications are made 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 he did not agree to the Landlord retaining any portion of their security deposit.

I find that the Landlord received the Tenant's forwarding address in writing on July 29, 2017.

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*.

By failing to perform an outgoing condition inspection reports in accordance with the *Act*, the Landlord also extinguished his right to claim against the security 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 believe he is 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 them 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 Landlord pay the Tenant the sum of **\$1,831.58** , comprised of double the security deposit and interest (2 x \$915.79).

During the hearing I informed the Tenant he was also entitled to recovery of the filing fee; however he did not make such a claim on his application and therefore is not entitled to those funds.

Conclusion

The Tenant is given a formal Monetary Order in the amount of **\$1,831.58**. The Tenant must serve a copy of the Order on the Landlord. I accept the Tenant's evidence that he and the Landlord regularly communicated by email during the tenancy; I therefore authorize the Tenant, pursuant to section 71 of the *Act*, to serve the Monetary Order on the Landlord by email.

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: February 22, 2018

Residential Tenancy Branch