



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application by the tenant filed under the Residential Tenancy Act (the “Act”) for a monetary order for return of double the security deposit (the “Deposit”), and to recover the filing fee for the claim.

Preliminary and procedural issues

The tenant attended the hearing. As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on September 12, 2017 to both respondents.

The tenant testified that the package was sent to C-B at the service address they provided and was redirected to the landlord’s new address and was returned unclaimed. A Canada post tracking number was provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the landlord C-B has been duly served in accordance with the Act.

The tenant testified that the package sent to M-B, who is the owner of the rental property was successfully delivered on September 14, 2017. A Canada post tracking number was provided as evidence of service. The tenant stated M-B’s legal counsel contacted them shortly thereafter.

I find the landlord M-B has been duly served in accordance with the Act.

On May 17, 2017, the tenant attended a hearing which was scheduled based on the tenant's application for dispute resolution. On June 9, 2017, the Arbitrator put the landlord on notice for the return of the security deposit. This decision should be read in conjunction with this decision. The file number has been noted on the covering page of this decision.

The tenant appeared, gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Is the tenant entitled to a monetary order for return of double the Deposit?

Background and Evidence

The tenancy began on August 15, 2014. Rent in the amount of \$1,690.00.00 was payable on the first of each month. A security deposit of \$845.00 was paid by the tenant.

The tenant testified that they vacated the premises on September 30, 2016. The tenants stated that they were at a previous hearing where the Arbitrator determined that the forwarding address was not served in a method approved of under the Act.

The tenant testified that the Arbitrator determined that the landlord was put on notice by their decision that they had 15 days from the date they receive the decision to return the security deposit or make an application claiming against the deposit. Filed in evidence is a copy of the decision.

The tenant testified that they heard from the landlord's legal counsel on or about September 15, 2017, where legal counsel indicated that M-B the owners son C-B left the owner with large bills. The tenant stated counsel also indicated that the claim should only be against C-B. The tenant stated that is not their concern that the M-B and their son C-B have personal issues between them. The tenant stated that they simple want the return of the security deposit.

Analysis

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

Under the Act, a landlord is defined as follows.

"landlord", in relation to a rental unit, includes any of the following:

(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

(i) permits occupation of the rental unit under a tenancy agreement, or

(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

I accept the undisputed evidence of the tenant that M-B is the owner of the rental unit, which was rented to the tenant by C-B, the landlord's son on behalf of the landlord. I find M-B, and C-B are landlords as defined by the Act.

Further, if there are personal issues between the landlords that does not release them from their obligation under the Act or their responsibility to the tenant.

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

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.

...

(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.

(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.

A previous hearing was held on May 17, 2017, and on June 9, 2017 a decision was made. The Arbitrator at that hearing put the landlords on notice that they had 15 days from the date they receive a copy of the decision to comply with section 38 of the Act. The decision was sent by the Residential Tenancy Branch by mail on June 9, 2017, and would be deemed served on June 14, 2017, five days after it was mailed.

The landlords' did not return the Deposit or make an Application for Dispute Resolution claiming against security deposit with 15 days after it was received.

I find the landlord has breached 38(1) of the Act.

The security deposit is held in trust for the tenant by the landlords. At no time do the landlords have the ability to simply keep the security deposit 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 security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlords did not have any authority under the Act to keep any portion of the Deposit. Therefore, I find that the landlords were not entitled to retain any portion of the Deposit.

Section 38(6) 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. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlords pay the tenant the sum of **\$1,790.00**, comprised of double Deposit (\$845.00) on the original amount held and to recover the \$100.00 fee for filing this Application.

The tenant is given a formal monetary order pursuant to 67 of the Act, in the above terms 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. The **landlords are cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application for return of double the Deposit is granted. The tenant is granted a monetary order in the above noted amount.

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: March 27, 2018

Residential Tenancy Branch