



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package. I accept the undisputed testimony of both parties and find that the tenant has sufficiently served the landlord with the notice of hearing package.

The tenant stated that his documentary evidence package was served to the landlord in person, but is unable to provide any details of how and when it was done. The landlord disputed this claim stating that no such documents were served to him. I find based upon the disputed testimony of both parties that the tenant has failed to provide sufficient evidence that the landlord was served with the submitted documentary evidence. As such, the tenant's documentary evidence is excluded from consideration in this hearing.

The landlord also submitted late documentary evidence on the same date as the scheduled hearing, however this documentary evidence was excluded as the material was related to damage and the cost of repairs, which was not relevant to the tenant's claim for return of double the security deposit.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties agreed that this tenancy began on August 1, 2016 on a fixed term tenancy ending on July 31, 2017 and then thereafter on a month-to-month basis. The monthly rent was \$1,200.00 payable on the 1st day of each month and a security deposit of \$600.00 was paid on July 6, 2017.

The tenant seeks a monetary claim of \$1,100.00 which consists of:

\$500.00	Return of Original Security Deposit (\$600.00)
\$600.00	Compensation, Fail to Comply Sec. 38(6)

The tenant claims that the tenancy ended on

The tenant stated that his forwarding address in writing was provided to the landlord for return of the security deposit in a letter dated August 31, 2017 by placing it in the landlord's mailbox with a witness.

The tenant also conceded \$100.00 from his original \$600.00 security deposit as he had noted that the rental unit required minor repairs that he was responsible for.

The landlord disputed that he did not receive the letter dated August 31, 2017 requesting the return of the security deposit to a provided forwarding address.

The tenant was unable to provide any proof of service for the letter dated August 31, 2017, but stated that it should have been on August 31, 2017.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security and/or pet damage deposit(s).

In this case, I find that both parties confirmed that the landlord still holds the tenant's \$600.00 security deposit due to an issue with the landlord's claim that the rental was left damaged. However, the landlord has disputed that he did not receive the tenant's forwarding address in writing. The tenant was unable to provide sufficient evidence to satisfy me that the August 31, 2017 letter was served to the landlord. On this basis, I find that the tenant is premature in his application and dismiss with leave to reapply. Leave to reapply is not an extension of an applicable limitation period.

Conclusion

The tenant's application is dismissed with leave to reapply.

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: April 26, 2018

Residential Tenancy Branch