



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution filed on October 2, 2017, wherein the Tenants sought monetary compensation from the Landlord including return of their security deposit.

The hearing was scheduled for 2:30 p.m. on May 1, 2018. Only the Tenants called into the hearing. They were given the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 2:52 p.m. in order to enable the Landlord to call in. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenants and I were the only ones who had called into this teleconference.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the Tenants' 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.

Preliminary Matter—Service of the Notice of Hearing

As the Landlord failed to call into the hearing service of the Notice of Hearing package and the Tenant's application was considered.

The Tenant J.P. testified that she served the Notice of Hearing and her application package on the Landlord by registered mail sent on October 2, 2017. A copy of the tracking number was provided in evidence and is recorded on the unpublished cover page of this my Decision. The Canada Post tracking information confirms that on October 3, 2017 "J.J." signed for the package; notably, the Landlord's initials are J.J. The package was then returned with the handwritten notation "RTS" with an arrow pointing to the Tenant's return address.

The Tenant also advised that when she sent her forwarding address by registered mail to the same address the package was also returned with the handwritten notation “No such person”.

The Tenant provided in evidence a copy of a land title search and a Form A Transfer to confirm that the Landlord, and a person, S.S.J., with the same surname, are the registered owners of the rental property and have been since November 28, 2006.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

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 October 7, 2017 and I proceeded with the hearing in their absence.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlord?
2. What should happen with the Tenants' security deposit?

Background and Evidence

J.P. stated that she first viewed the rental property on January 23, 2017. She returned on January 24, 2017, provided the Landlord with a \$975.00 cash payment for the security deposit, and signed the tenancy agreement. She confirmed that the Landlord did not provide her with a copy of the tenancy agreement although she did receive a receipt for the deposit (a copy of which was provided in evidence). The Tenant stated that the tenancy was to begin on January 31, 2017.

The Tenant further testified that the Landlord called her back on January 25, 2017 and told her that they would not allow her to move in because she was in receipt of income assistance.

The Tenant stated that she then went to her MLA's office and the constituency office worker called the Landlord and asked them to be sympathetic because the Tenant was expecting a baby March 1, 2017. The Tenant stated that she was informed by the constituency office worker that the Landlord said they were firm that the Tenant could not move in.

The Tenant's mother (the other named Tenant on the Application) found another place to live on February 11, 2017. The Tenant stated that between January 24, 2017 and February 11, 2017 they were staying with relatives and friends.

The Tenant sent a letter by registered mail to the Landlord on September 19, 2017 with her forwarding address and requested return of the security deposit. A copy of the tracking number was provided in evidence and is included on the cover page of this my Decision.

The Tenant confirmed that the Landlord has not returned the deposit and to her knowledge has not made an application for dispute resolution.

The Tenants also sought recovery of the cost of their storage unit for the months April, May and June 2017.

Analysis

After consideration of the undisputed testimony and evidence of the Tenants and on a balance of probabilities I find as follows.

I accept the Tenants' evidence that they paid a \$975.00 security deposit to the Landlords. I am persuaded by the Tenant's undisputed testimony as well as the copy of the receipt filed in evidence.

Section 38 of the *Residential Tenancy Act* deals with security deposits and provides as follows:

- 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.

I accept the Tenants undisputed evidence that they 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 September 24, 2017 (5 days after the registered mail package was sent).

I also find that 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*. Section 38(6) provides that when a landlord fails to return the deposit or apply for arbitration within 15 days, the tenant is entitled to double the deposit; the *Act* does not provide any flexibility in this regard.

I therefore Order, pursuant to sections 38 and 67 of the *Act*, that the Landlord pay the Tenants the sum of **\$1,950.00**, comprised of double the security deposit.

I accept the Tenants' evidence that they found alternate accommodation by February 11, 2017. Consequently, I find that their storage fees for April, May and June 2017 are not related to this tenancy and therefore not recoverable.

Conclusion

The Tenants are given a formal Monetary Order in the amount of **\$1,950.00** 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: May 03, 2018

Residential Tenancy Branch