



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on October 2, 2017 (the “Application”). The Tenant applied for a monetary order in the amount of \$350.00 for the return of his security deposit. The Tenant also sought reimbursement for the filing fee.

The Tenant appeared at the hearing and provided affirmed testimony. Nobody appeared at the hearing for the Landlord. The hearing process was explained to the Tenant who did not have questions when asked.

The Tenant had submitted three pages of documentary evidence prior to the hearing. I addressed service of the hearing package and Tenant's evidence. The Tenant said he delivered the hearing package and evidence to the Landlord personally by the deadline for doing so. He said he knocked on the Landlord's door and she opened the door. He said he held the package in front of the Landlord and told the Landlord the package contained court documents or important legal documents. He said the Landlord closed the door on him and so he tucked the package under the door mat.

Based on the undisputed testimony of the Tenant, I find the hearing package and Tenant's evidence were served on the Landlord in accordance with sections 88(a) and 89(1)(a) of the *Residential Tenancy Act* (the “Act”). Based on the undisputed testimony of the Tenant, I find the hearing package and evidence were served on the Landlord by the deadline of October 9, 2017 and therefore in accordance with section 59(3) of the *Act* and rule 3.1 of the Rules of Procedure. I accept the testimony of the Tenant that the Landlord did not take the package; however, the Landlord is not permitted to refuse or avoid service. I note that refusal or neglect to accept service is not a ground for review under the *Act*. Given I was satisfied of service, I proceeded with the hearing in the absence of the Landlord.

The Tenant confirmed he was requesting double the security deposit back if I found the Landlord breached the *Act*.

The Tenant was given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony provided. I have only referred to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Tenant entitled to a monetary order in the amount of \$700.00 being double the \$350.00 security deposit?

Background and Evidence

The Tenant testified that he moved out of the rental unit August 31, 2017. He said there was no written tenancy agreement between him and the Landlord but there was an oral agreement. He said the rental unit was a house and he rented a room. He said he shared a bathroom and kitchen with the Landlord and her daughter. He thought the Landlord rented the house from someone else although he never met the owner. The Tenant did not know if the Landlord was acting on behalf of the owner of the rental unit when the Landlord rented him the room. He did not know what the arrangement between the Landlord and owner was. He said he moved into the rental unit around April 20 or 24, 2017. He said the tenancy was month-to-month. He said rent was \$700.00 per month due on the last day of each month. He said he paid rent to the Landlord. He said he paid a security deposit of \$350.00 to the Landlord on April 5, 2017. He said him and the Landlord talked about there being no additional rent or damage deposit for his dog.

The Tenant had submitted a screen shot of text messages that he said were between him and the Landlord regarding him moving into the rental unit on April 24. The Tenant had also submitted a screen shot of an Interac e-transfer to the Landlord in the amount of \$350.00.

The Tenant said he provided the Landlord with his forwarding address via text message on August 31, 2017. He had submitted a screen shot of this text message. He testified that the screen shot shows that the text with his forwarding address was sent from him to the Landlord. He testified that the screen shot shows the Landlord responded to his text message. He said the Landlord responded the same day, three minutes after he

sent his forwarding address. He said there were further text messages between him and the Landlord regarding the security deposit and that the Landlord told him she legally had 15 days to return some or all of the deposit.

The Tenant said him and the Landlord discussed rent over text message. He said text message was the standard method of communication between him and the Landlord.

The Tenant said the Landlord did not have an outstanding monetary order against the Tenant from the Residential Tenancy Branch (the “Branch”) at the end of the tenancy. The Tenant said he did not agree in writing that the Landlord could keep some or all of the security deposit at any point. The Tenant said the Landlord did not apply to the Branch to keep some or all of the security deposit at any point. The Tenant said the Landlord still has the entire amount of the security deposit.

The Tenant said him and the Landlord walked through the room and inspected it upon move-in and move-out. The Tenant said the Landlord did not complete a condition inspection report or put anything in writing in relation to the walk-through upon move-in or move-out.

Analysis

I accept the undisputed testimony of the Tenant that he had an oral tenancy agreement with the Landlord in relation to a room in the rental unit. I have no evidence before me that the Landlord was not acting on behalf of the owner of the rental unit when she rented the room to the Tenant and therefore I find I have jurisdiction over this matter as the Landlord is a “landlord” as that term is defined in the *Act*. I note that section 4(c) of the *Act* does not preclude jurisdiction because, based on the undisputed testimony of the Tenant, the Tenant did not share a bathroom or kitchen with the owner of the rental unit.

I accept the undisputed testimony of the Tenant that he paid the Landlord a security deposit in the amount of \$350.00 on April 5, 2017. I note that the screen shot of the Interac e-Transfer supports this.

Section 38 of the *Act* sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy. I accept the undisputed testimony of the Tenant that he provided the Landlord with his forwarding address via text message on August 31, 2017. Section 38(1)(b) of the *Act* is only triggered when a landlord receives a tenant’s forwarding address in writing. Text message is not “in writing” as that term is

used in section 38(1)(b) of the *Act*. However, I accept the undisputed testimony of the Tenant that the standard method of communication between him and the Landlord was via text message. Further, I accept the undisputed testimony of the Tenant that the Landlord responded to his text message providing her with his forwarding address three minutes after the text message was sent. This is supported by the screen shot of the text messages. In these circumstances, I find the Landlord received the Tenant's forwarding address on August 31, 2017 and I find section 38(1)(b) of the *Act* was triggered on this date.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from August 31, 2017 to repay the security deposit to the Tenant with interest or apply for dispute resolution claiming against the security deposit.

I accept the undisputed testimony of the Tenant that the Landlord has not repaid the security deposit to the Tenant or applied for dispute resolution claiming against the security deposit.

Based on the undisputed testimony of the Tenant, I find the Tenant's right to the return of the security deposit had not been extinguished under the *Act*. Further, I find the Landlord's right to claim against the security deposit had been extinguished under sections 24(2) and 36(2) of the *Act* as the Landlord failed to complete a condition inspection report upon move-in and move-out.

Based on the undisputed testimony of the Tenant, I find the Landlord had no authority under the *Act* to retain some or all of the security deposit.

I note that the condition of the room in the rental unit upon move-in and move-out is irrelevant to this application. The Landlord extinguished her right to claim against the security deposit by failing to comply with the condition inspection report requirements in the *Act*. Further, if the Landlord thought there had been damage caused by the Tenant to the rental unit or room, the Landlord should have applied for dispute resolution claiming for the damages. The Landlord is not entitled to keep the security deposit simply because she feels damage was caused to the rental unit or room.

Given the above, I find the Landlord has not complied with section 38(1) of the *Act*. Pursuant to section 38(6) of the *Act*, the Landlord cannot make a claim against the security deposit and must pay the Tenant back double the amount of the security deposit. Therefore, I find the Tenant is entitled to a Monetary Order in the amount of

\$700.00, double the \$350.00 security deposit. I note that there is no interest owed to the Tenant on this security deposit as the percentage owed has been 0% since 2009.

Given the Tenant was successful in this application, I grant the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Based on the above, I grant the Tenant a Monetary Order in the amount of \$800.00.

Conclusion

The Tenant is entitled to a Monetary Order in the amount of \$800.00 being \$700.00 for double the security deposit pursuant to section 38(6)(b) of the *Act* and \$100.00 for reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

I grant the Tenant a Monetary Order in the amount of \$800.00. This Order must be served on the Landlord as soon as possible. If the Landlord fails 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 *Act*.

Dated: May 25, 2018

Residential Tenancy Branch