Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened in response to an application from the tenant pursuant to the *Residential Tenancy Act* ("*Act*") for:

- authorization to obtain a return of double the amount of the security or pet deposit, pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the tenant and the landlord appeared at the hearing. They were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant explained that the application for dispute resolution package including the Notice of Hearing was served via registered mail sent to the landlord on April 25, 2018. The landlord admitted to receiving this on April 26, 2018. Pursuant to sections 89 & 90 of the *Act*, I deem the landlord served with the Notice of Hearing, on the day it was received by him, April 26, 2018.

Issue(s) to be Decided

Is the tenant entitled to recover her deposit pursuant to section 38 of the *Act*?

Can the tenant recover the filing fee pursuant to section 72 (1) of the *Act*?

Background and Evidence

While I have turned my mind to all the documentary evidence, including any and all reports, photographs, diagrams, miscellaneous documents, letters, e-mails, and also the testimony of the parties, not all details of the evidence or the parties' respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings around each are set out below.

There was no written tenancy agreement. The parties agreed that the tenancy commenced on October 1, 2017, on a month to month basis with rent in the amount of $2,900.00 payable on the first day of each month. The tenancy ended on April 1, 2018, based on a Two Month Notice to End Tenancy delivered by the landlord. A damage deposit of $1,000.00 was required and the tenant gave evidence that this was paid in two installments of $300 and $700 dollars.

The tenant's evidence was that she only provided written notice of her forwarding address via a text message sent to the landlord within a few days of April 1, 2018. A copy of this text message was filed in evidence and it shows the landlord responded to a series of texts from the tenant that included the one with her address and a request for the return of the security deposit.

The landlord's evidence was that the security deposit of $1,000.00 was paid in full via the two installments; that he had in fact received the text message from the tenant with her forwarding address within a few days of April 1, 2018; that he has claims against the tenant for damage done to the rental unit and for the cost of filing the oil tank; that to date he has never filed for dispute resolution as he believed that the text message from the tenant with her forwarding address was not the written notice as is required by the *Act*.

Analysis

Section 38 of the *Act* requires the landlord to either return a tenant's security or pet deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the *later* of the end of a tenancy and, or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord **is required to pay** a monetary award, pursuant to section 38(6)(b) of the *Act,* **equivalent to double** the value of the security or pet deposit.

I find that the landlord's admission that he had in fact received the text message from the tenant with her forwarding address within a few days of April 1, 2018, means that to avoid having to pay a monetary award he had to act – either to return a tenant's security or pet deposit in full or file for dispute resolution for authorization to retain the deposit.

No evidence was produced at the hearing that the landlord applied for dispute resolution within 15 days of receiving a copy of the tenant's forwarding address, or following the conclusion of the tenancy on April 1, 2018. The landlord's own evidence is that he has not done so to date.

However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

No evidence was produced at the hearing that the landlord had obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

No evidence was produced at the hearing that the landlord had obtained an order under section 38(3)(b), retain the tenant's security deposit.

If the landlord had concerns arising from the damages that arose because of this tenancy, the landlord should have applied for dispute resolution to retain the security deposit.

Pursuant to section 38 (6) (a) of the *Act*, I find that the tenant is entitled to a monetary award of $2,000.00 representing double the amount of her security deposit.

As the tenant was successful in her application, she may recover the $100.00 filing fee associated with this application.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of $2,100.00 against the landlord. The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this 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: June 6, 2018

Residential Tenancy Branch