



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

On April 18, 2018, the Tenant made an Application for Dispute Resolution seeking a Monetary Order for a return of double the security deposit pursuant to section 38 of the *Act*.

The Tenant and Landlord attended the hearing and both parties provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package on April 18, 2018 by registered mail to the Landlord's mailing address, and the Landlord confirmed receipt of this package. As such, and in accordance with sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Tenant's Notice of Hearing package.

I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a return of double his security deposit pursuant to section 38 of the *Act*?

Background and Evidence

The Landlord advised that his evidence package was served to the Tenant by registered mail on May 29, 2018 and the Tenant confirmed receipt of this package on May 31, 2018. The Landlord's evidence did not meet the service requirements of Rule

3.15 of the Rules of Procedure; however, the Tenant stated that he could respond to the Landlord's evidence. As such, I elected to accept and consider this late evidence and continue with the proceeding.

The Landlord stated that the tenancy started on February 1, 2010 and that the Tenant surrendered the keys on April 2, 2018. Rent was established at \$740.00 per month and a security deposit of \$370.00 was also paid. The Tenant confirmed these details.

The Tenant submitted that a previous Dispute Resolution settlement decision was reached on February 21, 2018 where the parties agreed that the tenancy would end on March 31, 2018. He stated that the Landlord had from this point until the end of the tenancy to schedule a move out inspection report. He stated that he waited for the Landlord from 1:00 PM to 2:00 PM on March 31, 2018 and then knocked on the Landlord's door. The Landlord would not answer the door or answer text messages so the Tenant returned to the property on April 2, 2018 and posted the keys to the rental unit on the door, along with his forwarding address in writing. He stated that he tried everything to schedule an inspection with the Landlord.

The Landlord submitted that there were incidents with the Tenant involving the police and he was instructed not to contact the Tenant to do the move out inspection report. He stated that he did not have the time to find a representative to conduct the move out inspection for him, according to the Tenant's availability, and he could not get the police to accompany him for the inspection. He stated that he would not have answered the door if the Tenant did knock on March 31, 2018 to participate in the move out inspection with the Tenant as he feared for his safety. He also stated that his physical condition has hindered him as he had a lung operation in March. The Landlord submitted that the Tenant did not move out fully on March 31, 2018 and still had property in the rental unit on April 2, 2018, so this was another reason he did not respond to the Tenant's requests to engage in a move out inspection. He also referred to attached police business cards and referred to incidents he had with the Tenant. The Landlord made several references to his claims for compensation due to repairs and damage to the rental unit as well as lost rent for April. The Landlord acknowledged receiving the keys and the Tenant's forwarding address in writing on April 2, 2018.

Analysis

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an

Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must return the Tenant's security deposit and must pay the Tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the Tenant's provision of the forwarding address.

Based on the undisputed evidence before me, I accept that the Tenant's forwarding address was provided to the Landlord on April 2, 2018 and that the forwarding address has been sufficiently served for the purposes of the *Act*. As the Tenant provided a forwarding address in writing on this date and it was confirmed received by the Landlord, I find that this is the date which initiated the 15-day time limit for the Landlord to deal with the deposit. The undisputed evidence before me is that the Landlord did not return the security deposit in full within 15 days of April 2, 2018 or make an application to claim against the deposit.

Policy Guideline 17 is of relevance to the consideration of this Application and states:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

In accordance with section 38 of the *Act*, as the Landlord has not complied with the requirements of the *Act*, I find that the Tenant has established a claim for a Monetary Order amounting to double the original security deposit. As such, I grant the Tenant a Monetary Order in the amount of **\$740.00** in full satisfaction of this claim.

With respect to the Landlord's references to his claims for compensation due to repairs and damage to the rental unit as well as lost rent for April, these issues were not considered in the Application before me as the Landlord did not make his own Application to have these claims heard. As such, these claims remains open for the Landlord to file against the Tenant if he chooses to do so.

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$740.00** 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 18, 2018

Residential Tenancy Branch