



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On May 1, 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* and seeking to recover the filing fee pursuant to section 72 of the *Act*.

The Tenant attended the hearing; however, there was no appearance by the Landlord. The Tenant provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package, by registered mail, to the Landlord's mailing address in the tenancy agreement (the tracking number is attached to the first page of this decision). The tracking history of this package indicates that the Landlord signed for 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*?
- Is the Tenant entitled to recover the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The Tenant stated that the tenancy started on March 1, 2017 as a fixed term tenancy and that the tenancy ended on March 31, 2018. Rent was originally established at \$1,000.00 per month,

due on the first day of each month; however, the Tenant stated that the Landlord requested that the rent be increased to \$1,400.00 per month in September 2017. The Tenant stated that they came to a verbal agreement that rent would be increased to \$1,100.00 per month. A security deposit of \$500.00 was also paid.

As the Landlord lived out of province, the Tenant advised that the Landlord's daughter acted as the property manager. He submitted that she conducted an informal walk through of the rental unit at the end of tenancy; however, no written condition inspection reports were completed. He advised that a forwarding address was provided to the Landlord on April 2, 2018 via text message, that they regularly communicated by text message, and that the Landlord responded to this text. The Tenant advised that he received a cheque from the Landlord in the mail on May 15, 2018 of his deposit in full, which he had cashed.

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 am satisfied that the parties regularly communicated by text message. Therefore, I accept that the Tenant's forwarding address was provided to the Landlord via text dated April 2, 2018 and that the forwarding address has been sufficiently served for the purposes of the *Act*, pursuant to section 71. As the Tenant vacated the rental unit on March 31, 2018, I find that the text message 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 the Tenant has received a cheque in the amount of \$500.00, I grant the Tenant a Monetary Order in the amount of \$500.00 in full satisfaction of this claim.

As the Tenant was successful in his application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I provide the Tenant with a Monetary Order in the amount of \$600.00 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 13, 2018

Residential Tenancy Branch