



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANADIAN NATIONAL RELOCATION LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on April 12, 2018, wherein the Tenant requested return of double the security deposit paid and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on October 23, 2018.

The Landlord called into the hearing, as did S.M., an associate of the Corporation which was named as Tenant on the Application (for the purposes of this my Decision she will be referred to as "Tenant's Agent"). They were both provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

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 respective 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 Matters

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

The Landlord also advised that he legally changed his name in 2012. Pursuant to section 63 of the *Act* I amend the Tenant's Application to record the Landlord's legal name, as well as the Landlord's name noted on the tenancy agreement.

Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit paid?
2. Should the Tenant recover the filing fee paid?

Background and Evidence

The Tenant's Agent testified as to the terms of the tenancy as follows: the tenancy began May 1, 2016; monthly rent was \$7,000.00; and, the Tenant paid \$3,500.00 as a security deposit. The Tenant then entered into two sub-tenancies with separate subtenants with the authority of the Landlord; this was not disputed by the Landlord.

The Tenant's Agent submitted that the tenancy was supposed to end on April 30, 2017; however, in early April 2017 the Tenant was informed by the concierge of the building in which the rental unit was located that their fob was disconnected. She further stated that it was her understanding that the Landlord then entered into a tenancy agreement with the Tenant's subtenant; this was not disputed by the Landlord.

The Tenant's Agent testified that the Tenant provided their forwarding address to the Landlord three times as follows:

- on April 18, 2017 the Tenant gave the forwarding address by email;
- on April 20, 2017 the Tenant sent their forwarding address by registered mail; and,
- on May 3, 2017 the Tenant sent their forwarding address by text message.

(copies of this correspondence was provided in evidence)

The Tenant's agent confirmed that the Landlord has not returned the security deposit; she further confirmed that the Tenant did not agree to any deductions to their deposit.

The Tenant's agent testified that after they were locked out they had minimal communication with the Landlord. She also stated that in response to their request for return of the funds the Landlord stated he would not return the funds.

In response to the Tenant's claims the Landlord testified as follows.

He confirmed that he has the Tenant's \$3,500.00 security deposit. He further confirmed that the tenancy ended on April 30, 2017.

He also confirmed that he did not return the \$3,500.00 to the Tenant nor did he make an application for Dispute Resolution.

He stated that the Tenant did not pay their last month's rent and as such he retained the deposit believing he was entitled to those funds. He further claimed that he had very little knowledge of how to make an application at the time the tenancy ended.

Analysis

The Tenant applies for return of the security deposit pursuant to section 38 of the *Residential Tenancy Act* which provides as follows:

Return of security deposit and pet damage deposit

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.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

In this case the Tenant sent their forwarding address three times and by three different methods. Email and text messages are not an accepted form of delivery under the *Act*, although some Arbitrators may find this to be sufficient in the event the recipient confirms receipt. Section 90 of the *Act* provides that documents sent by registered mail are deemed served five days later; as the Tenant sent their forwarding address by registered mail on April 20, 2018, I find the Landlord received their forwarding address on April 25, 2018.

I accept the Tenant's evidence that they did not agree to the Landlords retaining any portion of their security deposit.

There was no dispute 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*. There was also no dispute that these funds have not been returned to the Tenant.

The security deposit is held in trust for the Tenant by the Landlord. If the Landlord believes he is entitled to monetary compensation from the Tenant for unpaid rent or other losses, he must either obtain the Tenant's consent to such deductions, or make an application for dispute resolution and obtain an Order from an Arbitrator authorizing him to retain a portion of the Tenant's security deposit. Here the Landlord did not have any such authority.

Having made the above findings, I must Order, pursuant to sections 38(1) and (6) and 67 of the *Act*, that the Landlord pay the Tenant the sum of **\$7,000.00** , comprised of double the security deposit (2 x \$3,500.00).

I also find, pursuant to section 72 of the *Act*, that the Tenant is entitled to recover the \$100.00 fee for filing this Application.

Conclusion

The Tenant is entitled to return of double the security deposit paid as well as recovery of the filing fee.

In furtherance of this, the Tenant is given a formal Monetary Order in the amount of **\$7,100.00**. The Tenant must serve a copy of the Order on the Landlord. 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: October 24, 2018

Residential Tenancy Branch