



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the Residential Tenancy Act (the "Act") section 38 for a return of all or part of the security deposit for this tenancy.

The landlord did not attend this hearing which lasted approximately 10 minutes. The tenant attended and was given a full opportunity to opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant was represented and assisted by her advocate.

The tenant testified that they had served the landlord with their application for dispute resolution dated March 2, 2018 and evidentiary materials by registered mail on March 9, 2018. A copy of the receipt with the Canada Post tracking number was submitted into evidence. Based on the undisputed testimony and documentary evidence I find that the landlord was deemed served with the application and evidence on March 14, 2018, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

Issue(s) to be Decided

Is the tenant entitled to recover the security deposit for this tenancy?

Background and Evidence

The tenant gave undisputed evidence regarding the following facts. This periodic tenancy began on December 1, 2017 and ended on January 29, 2018. The monthly rent was \$700.00 payable on the first of each month. A security deposit of \$350.00 was paid at the start of the tenancy in two installments of \$120.00 and \$230.00. The landlord still holds the security deposit for this tenancy.

No condition inspection report was prepared at either the start or the end of the tenancy. The tenant gave the landlord their forwarding address in a letter issued by their advocate dated January 31, 2018. The tenant did not give written authorization that the landlord may retain any portion of the security deposit. The tenant is not aware of any application by the landlord to retain the security deposit.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security 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 or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the undisputed evidence of the tenant that this tenancy ended on January 29, 2018 and that a forwarding address was providing in writing by a letter dated January 31, 2018. Pursuant to sections 88 and 90 of the *Act*, I find that the landlord is deemed to have received the forwarding address on February 4, 2018, five days after mailing.

I accept the undisputed evidence that the landlord has not returned the security deposit in full nor have they filed an application to retain the deposit.

Furthermore, the tenant testified that no condition inspection report was prepared at any time for this tenancy. Pursuant to section 24 of the *Act*, a landlord who fails to prepare a condition inspection report in accordance with section 23 extinguishes their right to claim against the security deposit.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days from February 4, 2018. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a \$700.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$700.00 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: October 1, 2018

Residential Tenancy Branch