



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDCT, MNSD, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not participate in the conference call hearing, which lasted approximately 10 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that on March 18, 2018 she forwarded the tenant's application for dispute resolution hearing package ("Application") via registered mail to the landlord. The landlord provided a Canada Post receipt and tracking number as proof of service.

Based on the testimony of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the landlord has been deemed served with the application and supporting documents on March 23, 2018, the fifth day after their registered mailing.

Preliminary Issue – Amendment of Tenant's Application

During the hearing the tenant testified that she had increased her monetary application from \$1,600.00 to \$1,724.57. Pursuant to Rule 4.1 of the Residential Tenancy Branch Rules of Procedure, an applicant may amend a claim by completing an Amendment to an Application for Dispute Resolution Form ("amendment form") and filing the completed amendment form with supporting evidence to the Residential Tenancy Branch. In the absence of a completed amendment form, I deny the tenant's request to amend her application to increase her monetary

claim to \$1,724.57. The tenant's monetary claim remains at \$1,600.00 as stated in her original application.

Preliminary Issue – Previous Decision

A previous Decision was rendered on January 31, 2018 regarding this tenancy. The file number has been included on the front page of this Decision for ease of reference. The Arbitrator found, based on the evidence presented that the tenant's forwarding address was not provided to the landlord in the format required under the *Act*. The Arbitrator therefore dismissed the tenant's application with leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant authorized to obtain a return of all or a portion of the security deposit?

Is the tenant authorized to recover the filing fee for this application from the landlord?

Background and Evidence

As per the testimony of the tenant, the tenancy began on March 1, 2017 on a fixed term until June 1, 2017. Rent in the amount of \$1,600.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$800.00 at the start of the tenancy, which the landlord still retains in trust. The tenant vacated the unit on June 2, 2017.

The tenant testified that on February 3, 2018 she served the landlord her forwarding address via registered mail. The tenant provided a Canada Post receipt and tracking number as proof of service. Based on the testimony of the tenant and in accordance with sections 88 and 90 of the *Act*, I find that the landlord has been deemed served with the forwarding address on February 8, 2018, the fifth day after its registered mailing.

The tenant testified that she did not authorize the landlord verbally or in writing, to retain the security deposit.

Analysis

The tenant did not provide testimony or evidence in relation to the monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement she sought in her application therefore this portion of her claim is dismissed without leave to reapply.

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit. The tenant may waive their right to the return of the security deposit through written authorization to the landlord. In the absence of written authorization to retain the security deposit from the tenant, the landlord must return the security deposit or file an application within fifteen days. Should the landlord fail to do this, the landlord must pay the tenant double the amount of the security deposit.

The landlord has been deemed served with the forwarding address on February 8, 2018. The landlord did not file an arbitration application to retain the deposit, the landlord did not return the deposit and the landlord did not receive written authorization to retain it. Based on this, I find the tenant is entitled to double the value of her security deposit in the amount of \$1,600.00.

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

Conclusion

The tenant's application for a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$1,700.00 against the landlord.

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 09, 2018

Residential Tenancy Branch