



Dispute Resolution Services

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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*) for authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;

Both parties attended the hearing and were given a full opportunity to be heard, to give affirmed testimony, present evidence and call witnesses.

As both parties were in attendance service was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution dated March 9, 2018 and evidence. The landlord stated that they had not submitted any evidence of their own. Based on the undisputed testimony I find that the landlord was served with the tenant's application and evidence in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a return of the security deposit for this tenancy?

Background and Evidence

The parties agreed on the following facts. This tenancy originally began sometime in 2016 and ended on August 31, 2017. A security deposit of \$547.50 and pet damage deposit of \$547.50 were paid at the start of the tenancy and are still held by the landlord. No condition inspection report was prepared at either the start or the end of the tenancy.

The tenant testified that they provided the landlord with a forwarding address in writing by email dated September 2, 2017. A copy of the email was submitted into written evidence. The email is sent to three recipient addresses. While the landlord confirmed that the all three email addresses used as recipient for that email are their active accounts the landlord said they had never received the email.

The tenant testified that they have not received any portion of the deposits from the landlord and they have not given written authorization that the landlord may retain any portion of the deposits.

The landlord testified that they believe the tenant is untruthful. The landlord said that the tenant misrepresented that they had experience mowing lawns when starting the tenancy. The landlord said that based on that misrepresentation they believe the tenant is generally untrustworthy. The landlord claimed that they have never been provided with a forwarding address by the tenant and have therefore not returned the deposits nor have they applied for authorization to retain the amounts.

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).

The landlord disputes that they received the email dated September 2, 2017 which provides the tenant's forwarding address. The landlord confirmed that the recipient addresses shown on the email are correct but claimed they did not receive the email. The landlord submitted that they had trouble with the tenant, that the tenant is untrustworthy based on an incident where they misrepresented their experience mowing lawns, and therefore the tenant's testimony should be discounted.

I do not find the landlord's submissions to be persuasive. I find that the documentary evidence of the email with three recipient addresses confirmed by the landlord as their addresses to be sufficient to show on a balance of probabilities that the landlord was served with the tenant's forwarding address. I do not find the landlord's suggestion that the tenant is being untruthful to be supported in documentary evidence. The landlord's

testimony consists of unproven allegations, anecdotes about past dealings, and issues which I find to be irrelevant such as the tenant misrepresenting their lawn care capabilities. I do not find that the landlord's evidence that they were not served with the email of September 2, 2017 to be believable or supported in the evidence.

I accept the tenant's evidence that the landlord was served with their forwarding address in writing by the email of September 2, 2017. I accept the tenant's evidence that they have not received any amount of the deposits nor have they provided written authorization allowing the landlord to retain any portion of the deposits.

Furthermore, the parties gave evidence that no condition inspection report was prepared at the start of the tenancy. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

...

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Accordingly, I also find that the landlord has extinguished any right to claim against the security deposit by failing to prepare a condition inspection report at the start of the tenancy.

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. I accept the tenant's evidence that they have not waived the 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 \$2,190.00 Monetary Order, double the value of the security deposit and pet damage 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 \$2,190.00 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: September 27, 2018

Residential Tenancy Branch