



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 their security deposit pursuant to section 38.

The landlord did not attend this hearing, although I waited until 1:42 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The tenant attended the hearing and was given a full opportunity to be heard, to present their sworn testimony and to make submissions.

Rules 7.1 and 7.3 of the Rules of Procedure provides as follows:

Commencement of the hearing - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The tenant testified that the Application for Dispute Resolution (the Application) and an evidentiary package were sent by way of Canada Post Registered mail on January 24, 2018. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. In accordance with sections 88, 89 and 90 of the *Act*, I find the landlord was deemed served with the Application and an evidentiary package on January 29, 2018.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of all or a portion of their security deposit?

Background and Evidence

The tenant gave undisputed testimony that this tenancy began on May 01, 2014, with a monthly rent in the amount of \$595.00, due on the first day of each month. The tenant testified that a security deposit in the amount of \$297.50 was paid to the landlord

The tenant provided in evidence a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm the mailing of the Application which contained the address of the tenant.

The tenant gave undisputed testimony that the tenant's forwarding address was provided to the landlord on the Application which was sent by registered mail on January 24, 2018.

Analysis

Having reviewed the documentary evidence and undisputed testimony, I find that the landlord was deemed served with the tenants' forwarding address on the Application which was deemed served to the landlord on January 29, 2018

Section 38 (4) allows a landlord to retain from a security deposit if, at the end of the tenancy, the tenant agrees in writing the landlord may retain an amount to pay a liability or obligation of the tenant.

If the landlord does not have the tenants' agreement in writing, section 38 (1) of the *Act* stipulates that within 15 days of either the tenancy ending or the date the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

Since I have found the landlord was deemed served with the tenant's forwarding address on January 29, 2018, I find the landlord was obligated to file an Application on or before February 13, 2018, 15 days after receiving the tenant's forwarding address or obtain the tenant's written consent to keep the security deposit.

I find there is no evidence provided to show that the landlord had the tenant's agreement to keep the security deposit in writing or that the landlord applied for dispute resolution within 15 days of the end of the tenancy to retain a portion of the security deposit as required under section 38 (1).

Section 38 (6) of the *Act* stipulates that a landlord who does not comply with section 38 (1) of the *Act* may not make a claim against the security deposit or any pet damage deposit and must pay double the amount of the security deposit, pet damage deposit or both, as applicable.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. Pursuant to sections 38 (6) and 67 of the *Act*, I find that the landlord must pay the tenant double the security deposit as they have not complied with section 38 (1) of the *Act*.

I find that the tenant is entitled to a monetary award of \$595.00, which is comprised of double the security deposit (2 x \$297.50) plus applicable interest. There is no interest payable over this period.

The landlord may still file an application for lost revenue and damages; however, the issue of the security deposit has now been conclusively dealt with in this hearing.

Conclusion

The tenant is successful in their Application.

Pursuant to section 67 of the *Act*, I grant a Monetary Order in the tenant's favour in the amount of \$595.00, which is for double the security deposit. The tenant is provided with this 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 Orders 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 05, 2018

Residential Tenancy Branch