



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking:

- A monetary order for money owed or damage or loss under the *Act*, regulation or tenancy agreement; and
- A monetary order for the return of their security deposit.

The hearing was convened by telephone conference call and was attended by the Tenant, who provided affirmed testimony. Neither the Landlord nor an agent for the Landlord attended. The Tenant was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Landlord nor an agent for the Landlord attended the hearing, I confirmed service of these documents as explained below.

The Tenant testified that although she resided in the rental unit for 13.5 years, she never had a written tenancy agreement. As a result, she stated that the Application, the Notice of Hearing and the documentary evidence before me for consideration were sent to the agent for the Landlord, J.E., who is the person she has had contact with and paid rent to during her tenancy. She testified that this document package was sent by registered mail on March 29, 2018, and provided me with the registered mail tracking number.

Although the Application, the Notice of Hearing and the documentary evidence before me for consideration were sent to the agent for the Landlord, J.E., section 1 of the *Act* includes in the definition of a landlord, an agent or another person who, on behalf of the landlord permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under the *Act*, the tenancy agreement or a service

agreement. As a result, I find that J.E. meets the definition of a landlord under the *Act* and will therefore be referred to throughout this decision as the “Landlord”.

The Tenant stated that the registered mail package was not picked-up and returned to her; however, she argued that this is the correct and only address for the Landlord and the documents should be considered served in accordance with the *Act* as she followed all requirements for their service.

Section 90 of the *Act* states that unless earlier received, a document given or served by mail is considered received on the 5th day after mailing. Residential Tenancy Branch Policy Guideline # 12 states that where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision.

Based on the above, and in the absence of any evidence to the contrary, I therefore find that the Landlord was deemed served with the Application, the Notice of Hearing and the documentary evidence before me for consideration in accordance with sections 88, 89, and 90 the *Act* on April 3, 2018, five days after they were sent by registered mail to the address listed for the Landlord in the Application.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

At the request of the Tenant, copies of the decision and any orders issued in their favor will be mailed to them at the address provided in the Application.

Issue(s) to be Decided

Is the Tenant entitled to a Monetary Order for money owed or damage or loss under the *Act*, regulation or tenancy agreement?

Is the Tenant entitled to the return of their security deposit?

Background and Evidence

The Tenant testified that although she resided in the rental unit for 13.5 years, she only ever had a verbal tenancy agreement. The Tenant stated that at the time the tenancy began in 2005, she paid \$262.50 to the Landlord for a security deposit, which was

equivalent to half a month's rent, and that the Landlord still holds this amount, plus any interest owed to her. The Tenant stated that at the time the tenancy ended, rent was \$785.00 and due on the first day of each month.

The Tenant stated that on November 30, 2017, she personally gave written notice to end her month-to-month tenancy to the agent acting for the Landlord, K.A., and that she moved out of the rental unit on December 15, 2017. As proof that K.A. was acting as an agent for the Landlord at that time, the Tenant submitted a letter from the Landlord appointing K.A. and another person, N.A., as their agents. The Tenant provided a copy of this letter for my consideration and stated that although the letter is dated December 1, 2017, this is a clerical error and the letter was in fact drafted and personally served on November 30, 2017.

The Tenant also stated that she sent her forwarding address in writing to the Landlord by mail, on February 20, 2018, and submitted a copy of this letter for my consideration. The Tenant stated that although she received a letter from the agent K.A. on January 3, 2018, stating that her security deposit would not be returned, she did not agree that any amount of her security deposit could be withheld and the Landlord has not filed a claim against her security deposit or returned it to her within the prescribed time period. As a result, the Tenant sought the return of double her security deposit amount, plus interest. The Tenant also sought \$392.50, which is half of her \$785.00 rent, as she move out halfway through December and the Landlord regained possession of the rental unit and began renovations.

Neither the Landlord nor an agent for the Landlord attended the hearing to provide any evidence or testimony for my consideration.

Analysis

Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 7 also states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 45 of the *Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the

month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. Based on the Tenant's undisputed testimony, I am satisfied that the tenancy was periodic in nature at the time the Tenant gave her written notice to end the tenancy. I also accept that the written notice was personally served on the agent for the Landlord on November 30, 2017. Although the Tenant's written notice to end the tenancy does not state the date upon which she sought to end the tenancy, pursuant to section 45 of the *Act*, and the Tenant's undisputed testimony that rent was due on the first day of each month, I find that the earliest date that the Tenant could have ended her tenancy by this written notice was December 31, 2017.

Although the Tenant testified that she moved out of the rental unit on December 15, 2017, as December 31, 2017, was the earliest date under the *Act* upon which she could have lawfully ended her tenancy by giving written notice to do so, I find that the Tenant is therefore responsible for the entire \$785.00 in rent for December of 2017, regardless of the date upon which she chose to move out in December. As a result, I therefore dismiss the Tenant's \$392.50 claim for reimbursement of half of December 2017 rent without leave to reapply.

Having made this finding, I will now turn my mind to the Tenant's claim for the return of double her security deposit, plus any interest owed. The Tenant testified that the tenancy began in 2005 at which point a \$262.50 security deposit was paid. The Tenant also testified that she sent her forwarding address my mail to the Landlord on February 20, 2018, and has yet to receive either her deposit or notice of a claim filed by the Landlord under the *Act* seeking retention of this deposit. While the Tenant submitted a copy of a letter from K.A., one of the agents for the Landlord, stating that the deposit would not be returned, the Tenant testified that she never agreed that any amount of her deposit could be retained.

As there is no evidence before me to the contrary, I accept the Tenant's testimony and documentary evidence that her forwarding address was sent in writing to the Landlord on February 20, 2018, and I therefore find that it was deemed received on February 25, 2018, pursuant to section 90 of the *Act*. Section 38(1) of the *Act* states that except as provided in subsection (3) or (4) (a), within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

As there is no evidence before me that the Landlord was authorized to retain any amount from the Tenant's security deposit pursuant to sections 38 (3) or 38 (4) (a) of the *Act*, or that the Tenant extinguished her right to the return of her deposit under the *Act*, I find that the Landlord was therefore obligated to either return the Tenant's security deposit to her, plus interest calculated in accordance with the *regulation*, or file a claim against it, no later than March 12, 2018, which is 15 days after the date that the Landlord is deemed to have received the Tenant's forwarding address in writing.

I accept the Tenant's undisputed evidence that no amount of her deposit had been returned to her as of the date of the hearing. In addition to the above, section 38 (6) of the *Act* states that If a landlord does not comply with subsection (1), the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As a result, I find that the Tenant is entitled to the return of double her security deposit amount, with interest calculated in accordance with the regulation.

As the Tenant paid \$262.50 for her security deposit in 2005, I find that the interest owed on the security deposit in accordance with the *Act* and regulation is \$9.29, as calculated below:

Result: Deposit interest **\$9.29**

The total that should be returned is **\$271.79** based on the **\$9.29** of interest that is owed on the deposit.

2005 \$262.50: \$0.00 interest owing (0% rate for 16.98% of year)
 2006 \$262.50: \$1.31 interest owing (0.5% rate for 100.00% of year)
 2007 \$263.58: \$3.96 interest owing (1.5% rate for 100.00% of year)
 2008 \$267.06: \$4.02 interest owing (1.5% rate for 100.00% of year)
 2009 \$271.07: \$0.00 interest owing (0% rate for 100.00% of year)
 2010 \$271.79: \$0.00 interest owing (0% rate for 100.00% of year)
 2011 \$271.79: \$0.00 interest owing (0% rate for 100.00% of year)
 2012 \$271.79: \$0.00 interest owing (0% rate for 100.00% of year)
 2013 \$271.79: \$0.00 interest owing (0% rate for 100.00% of year)
 2014 \$271.79: \$0.00 interest owing (0% rate for 100.00% of year)
 2015 \$271.79: \$0.00 interest owing (0% rate for 100.00% of year)
 2016 \$271.79: \$0.00 interest owing (0% rate for 100.00% of year)
 2017 \$271.79: \$0.00 interest owing (0% rate for 100.00% of year)
 2018 \$271.79: \$0.00 interest owing (0% rate for 88.49% of year)

Based on the above, and pursuant to section 67 of the *Act*, the Tenant is therefore entitled to a Monetary Order in the amount of \$543.58, which is double the amount of her security deposit and interest.

Conclusion

The Tenant's claim for \$392.50 in rent is dismissed without leave to reapply.

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$543.58. 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 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: November 19, 2018

Residential Tenancy Branch