



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with the Tenant's adjourned Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*"), made on June 19, 2018, for the return of his security deposit, and to recover the filing fee for this application. The matter was set for a conference call.

The Tenant attended the conference call hearing and was affirmed to be truthful in his testimony. As the Landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that the Application for Dispute Resolution and Notice of Hearing documents had been served on the Landlord, by Canada Post Registered mail, sent on October 5, 2018, a Canada post tracking number was provided as evidence of service. I find that the Landlord had been duly served in accordance with sections 89 and 90 of the *Act*.

The Tenant was provided with the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Has there been a breach of Section 38 of the *Act* by the Landlord?
- Is the Tenant entitled to the return of his security deposit?

Background and Evidence

The Tenant testified that the tenancy began on May 1, 2017, as a month to month tenancy. Rent in the amount of \$600.00 was to be paid by the first day of each month and the Landlord had been given a \$300.00 security deposit.

The Tenant testified that the tenancy ended on April 30, 2018, in accordance with the *Act*. The Tenant testified that he provided his forwarding address, in writing to the Landlord on May 1, 2018, by posting it to the front door of the Landlord's home. The Tenant also testified that he did not agree to any deduction to the deposits.

The Tenant testified that the Landlord has not returned the deposit or served him with notification of the Landlord making a claim against the deposit.

Analysis

Based on the evidence before me, the testimony of the Tenant, and on a balance of probabilities:

I find that the Tenant paid a security deposit of \$300.00 at the outset of this tenancy and that this tenancy ended on April 30, 2018, in accordance with the *Act*. I also find that the Landlord was in receipt of the Tenant's forwarding address on May 4, 2018, three days after it was posted to the door of his home, pursuant to section 90 of the *Act*.

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposit or repay the security deposit to the tenant.

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

- (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Accordingly, the Landlord had until May 19, 2018, to comply with section 38(1) of the *Act* by either repaying the deposits in full to the Tenant or submitting an Application for Dispute resolution to claim against the deposits. The Landlord, in this case, did neither.

At no time does a landlord have the right to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the landlord and the tenant are unable to agree to the repayment of the security deposit or that deductions be made, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that the landlord thinks they are entitled to keep even a small portion of the deposit, based on unproven claims.

I find that the Landlord breached section 38 (1) of the *Act* by not returning the Tenant's deposit or filing a claim against the deposit within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

- 38 (6)** If a landlord does not comply with subsection (1), the landlord
- (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, I find that pursuant to section 38(6) of the *Act* the Tenant has successfully proven his entitled to the return of double the amount of his deposits. I find for the Tenant, in the amount of \$600.00, granting a monetary order for the return of double the security deposit.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has been successful in his application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for his application.

Conclusion

I find that the Landlord has breached section 38 of the *Act*, as the Landlord failed to repay or make a claim against the security and pet damage deposits as required by the *Act*.

I find for the Tenant pursuant to sections 38 and 72 of the *Act*, and I grant the Tenant a Monetary Order in the amount of \$700.00. 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 15, 2018

Residential Tenancy Branch