



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

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

- authorization to obtain a return of their security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1.43 p.m. in order to enable the landlord to call into 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 sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant gave undisputed sworn testimony supported by written evidence that they sent the landlord a copy of their dispute resolution hearing package by Canada Post's ExpressPost service requiring a signature from the landlord on September 14, 2018. The tenant provided copies of the Canada Post Tracking Number to confirm this mailing which is considered registered mail for the purposes of the *Act*. I find that the landlord was deemed served with this package in accordance with sections 89 and 90 of the *Act* on September 19, 2018, the fifth day after its mailing.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of their security deposit? Is the tenant entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant entered into written evidence a copy of a one-year fixed term Residential Tenancy Agreement (the Agreement) the parties both signed on December 30, 2017. According to the terms of the Agreement, the tenancy was to run from February 1, 2018 until January 31, 2019. Monthly rent was set at \$1,280.00, payable in advance on the last day before the first of each month. The landlord continues to hold the tenant's \$640.00 security deposit paid on December 30, 2017.

The tenant maintained that they notified the landlord in or about mid-May 2018, of their intention to end this tenancy by the end of June 2018. The tenant provided written evidence that the reason for their decision to end their tenancy before January 31, 2019 was due to noise they were encountering from the tenant who lived above them. The tenant provided copies of receipts for their rent payment until the end of June 2018. The tenant maintained that they vacated the rental unit by June 26, 2018.

The tenant applied for the return of their \$640.00 security deposit when the landlord did not return their deposit.

At the hearing, the tenant said that they had not sent the landlord their forwarding address in writing before they applied for dispute resolution.

Analysis

Section 38 of the *Residential Tenancy Act* (the *Act*) establishes the provisions regarding the return of the Tenant's security deposit. Subsection 38(1) of the *Act* reads as follows:

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.

Subsection 38(2) of the *Act* notes that subsection 38(1) does not apply if the Tenant's right to the return of the security deposit has been extinguished.

Section 39 of the *Act* establishes that it is the Tenant's obligation to provide a forwarding address for return of the security deposit within a year of the end of the tenancy. If that does not occur, the Landlord may keep the deposit and the Tenant's right to the deposit is extinguished.

Residential Tenancy Branch Policy Guideline 17, paragraph 10 establishes the following:

The landlord has fifteen 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 arbitration application claiming against the deposit, or return the deposit plus interest to the tenant.

In this case, the tenant testified at the hearing that they had not sent the landlord their forwarding address in writing prior to applying for dispute resolution. Under these circumstances, the fifteen day time period that the landlord has to return the tenant's security deposit in full or apply to retain it, provided the landlord's right to apply to retain it has not been extinguished, has not yet started. For this reason, I dismiss the tenant's application with leave to reapply.

As mentioned at the hearing, the tenant must serve the landlord with their forwarding address in writing. I order that this service of the tenant's forwarding address to the landlord be done by way of registered mail or Canada Post's ExpressPost service requiring the landlord's signature to confirm successful receipt of the tenant's forwarding address.

In the event that the landlord does not return the tenant's security deposit in full within 15 days of being deemed to have received the tenant's forwarding address in writing and the tenant decides to reapply for dispute resolution, I would suggest that the tenant include a copy of their forwarding address in writing and copies of their registered

mailing as part of their written evidence with their new application for dispute resolution. The tenant would also need to resubmit any written evidence that they believe is relevant for this new application for dispute resolution.

Conclusion

I dismiss the tenant's application with leave to reapply.

I order that the tenant serve the landlord with their forwarding address in writing by registered mail or by Canada Post's ExpressPost service requiring the landlord's signature to confirm successful receipt of the tenant's forwarding address by 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: December 10, 2018

Residential Tenancy Branch