



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* ("Act") for:

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord, the tenant and the tenant's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. "Witness KC," the former landlord for this rental unit, appeared at this hearing and testified on behalf of the landlord. Both parties had equal opportunities to question the witness.

The hearing began at 1:30 p.m. and ended at 2:20 p.m. for a total of 50 minutes. Witness KC participated in the entire conference but exited early at 2:15 p.m. As witness KC was the former landlord for this unit and she had personal knowledge of many of the tenancy events, she was not excluded from the outset of the hearing. Both parties consented to witness KC being present during the entire hearing and exiting early.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of witness KC's written evidence package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with witness KC's written evidence package. The landlord did not provide any written evidence for this hearing.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to remove witness KC as a landlord-respondent and to correct the spelling of the landlord's surname. Both parties and witness KC agreed to these amendments during the hearing. Both parties agreed that witness KC was no longer a party to this tenancy and did not hold the tenant's security deposit as it was transferred to the landlord when he purchased the rental unit from witness KC.

Issues to be Decided

Is the tenant entitled to a return of double the value of her security deposit?

Is the tenant entitled to recover the filing fee for her application?

Background and Evidence

Both parties and witness KC agreed to the following facts. This tenancy began on February 19, 2018 and ended on May 18, 2018. Monthly rent in the amount of \$500.00 was payable on the first day of each month. A security deposit of \$500.00 was paid by the tenant to witness KC and this deposit was transferred to the landlord when he purchased the rental unit in March 2018. The landlord continues to retain this security deposit in full. No move-in or move-out condition inspection reports were completed for this tenancy. Both parties signed a written tenancy agreement. The landlord did not have written permission to keep any amount from the tenant's security deposit. The landlord did not file an application to keep any part of the tenant's security deposit.

The tenant initially stated that she provided a written forwarding address to the landlord by way of this application for dispute resolution. She then claimed that she sent her forwarding address by way of registered mail in a letter to the landlord on June 20, 2018 to the rental unit address. The landlord confirmed that he provided this address to the tenant because he was living there after she vacated. The tenant provided the letter and a Canada Post tracking number verbally during the hearing. When I looked up the tracking number on the Canada Post website, it indicated that the mail went out July 20, 2018. The tenant then claimed that it must have been sent July 20, 2018, although she had two tracking numbers in front of her during the hearing. The landlord said that he did not get a letter from the tenant. The landlord said that he only got the tenant's address by way of her application for dispute resolution.

The tenant seeks a monetary order for double the amount of her security deposit of \$500.00, totalling \$1,000.00, plus the \$100.00 application filing fee.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to 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 authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the undisputed testimony of both parties. The tenancy ended on May 18, 2018. The tenant did not give the landlord written permission to retain any amount from her security deposit. The landlord did not return the deposit to the tenant.

Over the period of this tenancy, no interest is payable on the landlord's retention of the tenant's security deposit of \$500.00. I find that the tenant is only entitled to receive the original amount of her security deposit, totalling \$500.00, from the landlord.

I find that the tenant is not entitled to the return of double her deposit even though the landlord did not return the deposit to the tenant within 15 days after the tenancy ended on May 18, 2018, because I find that the tenant did not prove service of her forwarding address to the landlord, only by way of her application for dispute resolution, so the doubling provision was not triggered. The tenant said that she served the landlord with her written forwarding address by way of her application and then by way of registered mail. She provided June 20 initially and then said it was July 20 after I checked the tracking number online. The tenant provided confusing evidence that changed throughout the hearing. The landlord claimed that he did not receive the mail, he only knew the tenant's address from this application.

As the tenant was only partially successful in her application, I find that she is not entitled to recover the \$100.00 filing fee paid for her application from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$500.00 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.

The remainder of the tenant's application is dismissed without leave to reapply.

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 31, 2018

Residential Tenancy Branch