



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: Landlord: MNRL-S, FFL
 Tenant: MNSD, FFT

Introduction

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

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- a monetary order for money owed or compensation for damage or loss under the *Act*; authorization to retain the tenants' security deposit, and
- authorization to recover the filing fee for this application from the tenant.

This hearing also dealt with the tenants' application pursuant to the *Act* for:

- authorization to obtain a return of the security deposit; and
- authorization to recover the filing fee for this application from the landlord.

Both parties attended the hearing and were given a full opportunity to be heard, to present testimony, to make submissions and to question one another.

Preliminary Matter

The landlord testified she applied for dispute resolution on July 31st, 2018 to retain the tenant's \$645.00 security deposit and obtain an additional \$76.14 as compensation for unpaid rent for the period July 1 – 17, 2018.

The landlord overlooked serving the dispute resolution application to the tenant until she received the tenant's application for dispute resolution to obtain her security deposit. The tenant served her application to the landlord by registered mail on August 21, 2018.

The landlord did eventually serve the tenant with her dispute resolution application in so far as she responded to the tenant's application and enclosed her application in the response. She testified that she made changes to the application content in an effort to reformat it as a response to the tenant's application.

In her written response to the tenant's application, the landlord updated her request to claim only the \$645.00 security deposit, foregoing the additional \$76.14, as noted in her original application. In her testimony during the hearing, she asked to be reimbursed for the \$100.00 filing fee, as per her original application even though she had neglected to request it this in her written response. The landlord confirmed that the total amount she is seeking from the tenant is \$745.00.

Both parties agreed the tenant received the response from the landlord on September 27, 2018. The tenant testified that she did not know why her security deposit had not been returned to her until she received the landlord's documents on September 27, 2018. She testified that had she received notice of the landlord's application, she may not have spent \$100.00 to file her own application.

While the landlord started the process of applying for dispute resolution, the landlord did not serve the application to the tenant until she received the tenant's application to recover her security deposit. The purpose of serving the application is to notify the parties being served of matters relating to the *Act* and regulations, the tenancy agreement, or a dispute resolution proceeding. Another purpose of serving the documents is to allow the other party to prepare for the hearing and gather information they may need to serve and submit as evidence in support of their position.

The Act sets out the requirement that the applicant serve the respondent within three days of filing with the Residential Tenancy Branch and specifies how documents must be served:

Section 59(3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

Section 89(1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;(e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

The Rules of Procedure also provide requirements for service of the application:

3.1 Documents that must be served with the hearing package

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Application for Dispute Resolution;
- b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC office with the Application for Dispute Resolution, in accordance with Rule 2.5 [*Documents that must be submitted with an Application for Dispute Resolution*].

3.5 Proof of service required at the dispute resolution hearing

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the hearing package and all evidence as required by the Act and these Rules of Procedure.

As the landlord has failed to serve her hearing documents within 3 days of making her claim in accordance with the requirements set forth in Section 59(3) I dismiss her application with leave to reapply. I note however, that since this hearing is crossed with the tenant's application for return of the security deposit, the disposition of the security deposit will be dealt with during this hearing and will not be available for the landlord to claim in any future application.

I find the tenant has met the dispute resolution application service requirements per section 59 and 89 of the Act.

Issues to be Decided

- Is the tenant entitled to the return of her security deposit pursuant to Section 38 of the *Act*?
- Is the tenant entitled to recover the \$100.00 filing fee from the landlord, pursuant to Section 72 the *Act*?

Background and Evidence

The tenancy began on April 1, 2018. The tenant testified the only reason she occupied the rental unit was because she was employed as the building manager. The tenant received a 25% discount on her rent; she paid \$986.25 per month and rent was due on the first of the month according to the tenancy agreement. The parties agreed that the landlord currently holds in trust a security deposit of \$645.00.

The parties agreed that the tenant vacated the unit on July 17, 2018 and had only paid rent to June 30th, 2018. The tenant testified she could not pay the rent for July 1 – 17, 2018 because she did not have the funds to do so.

The parties agreed the move-out condition inspection occurred on July 17, 2018 and the tenant provided her forwarding address in writing to the landlord the next day on July 18, 2018. The landlord testified in the hearing that she had not received authorization from the tenant to retain any portion of the security deposit.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

I find that because the landlord did not serve the tenant with the application for dispute resolution within the three days required under Section 59(3) of the *Act* and until she was notified of the tenant's application, the landlord has failed to complete the requirements of due diligence in pursuing a claim against a security deposit within 15 days of receiving the tenant's forwarding address, as required under Section 38(1).

As I have found that the landlord has failed to comply with the requirements set forth in Section 38(1), I find, pursuant section 38(6)(b), the landlord must pay the tenant double

the value of the deposit because the landlord did not meet the requirement to lawfully retain the deposit.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,390.00** comprised of \$1,290.00 double the amount of the security deposit owed and the \$100.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: January 3, 2019

Residential Tenancy Branch