



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD, FFL

Introduction

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

- the return of the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's agent, who is the husband of the landlord, attended with the landlord and primarily spoke on the landlord's behalf.

As both parties were present, service of documents was confirmed. The tenant testified that he personally served the landlord with the Notice of Dispute Resolution Proceeding on August 21, 2018, which was confirmed by the landlord's agent. Based on the testimonies of the parties, I find that the landlord was served with the notice of this hearing in accordance with section 89 of the *Act*.

The tenant stated that his evidentiary materials were included with the Notice of Dispute Resolution Proceeding, however the landlord's agent disputed this and stated that he only received the notice of this hearing, not any evidence. The landlord's agent confirmed that the landlord did not submit any evidence in this matter.

The tenant submitted into documentary evidence a signed statement by Witness #1 (name noted on cover sheet of this Decision) attesting to having witnessed the tenant serve the landlord's agent with the notice of dispute resolution and evidence on August 21, 2018. The tenant did not schedule this witness to attend the hearing, and therefore the witness was not available to provide testimony or be questioned by the landlord. As such, I find that the tenant has failed to prove, on a balance of probabilities that he provided his evidence to the landlord with the notice of this hearing. Therefore, the only evidence I have considered is evidence that

the tenant submitted which was originally provided to the tenant by the landlord, which in this case is the receipt from the landlord for the tenant's payment of the security deposit.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit? If so, is the tenant entitled to a monetary award equivalent to the value of the security deposit because of the landlord's failure to comply with section 38 of the Act?

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

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The parties testified that there was no written tenancy agreement for this month-to-month tenancy, only a verbal tenancy agreement. The tenant submitted into documentary evidence a handwritten receipt from the landlord dated November 29, 2017 confirming the landlord's receipt of the tenant's security deposit of \$375.00. The receipt also confirmed monthly rent of \$750.00 and the tenant's move in date on December 25, 2017.

The tenant testified that he moved out on January 31, 2018.

The landlord alleged that the tenant failed to provide the required notice to end the tenancy. I advised the landlord that he was not able to make a claim through the tenant's application for dispute resolution, however, the landlord is at liberty to file his own application for dispute resolution regarding any claims he feels he may have against the tenant arising from this tenancy.

The tenant testified that he personally provided the landlord with his forwarding address in writing, in the form of a letter, on June 1, 2018. The landlord disputed receiving the tenant's forwarding address.

The tenant submitted into documentary evidence a signed statement dated August 20, 2018 by Witness #2 (name noted on cover sheet of this Decision) attesting to having witnessed the tenant give the landlord's agent the tenant's forwarding address on June 1, 2018. The tenant did not schedule this witness to attend the hearing, and therefore the witness was not available to provide testimony or be questioned by the landlord at the hearing.

The tenant was able to call a different witness whom the tenant testified had witnessed the tenant provide the landlord with his forwarding address. The witness stated that she had

witnessed the tenant provide the landlord with a piece of paper, but she did not see what was written on the paper. The witness did not remember the date that this happened. The landlord claimed that the witness was recalling the day the tenant served the landlord with the Notice of Dispute Resolution Proceeding, not the forwarding address.

Analysis

The *Act* contains comprehensive provisions for addressing security and/or pet damage deposits at the end of the tenancy. Both the landlord and the tenant have responsibilities under section 38 of the *Act*.

Section 38(1) of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 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

Where a tenant seeks the return of the security deposit, the tenant bears the burden to prove when and how a written forwarding address was given to the landlord since a landlord is not required to take action with respect to the security deposit unless a written forwarding address is received from the tenant.

In this case, the landlord disputed receipt of the tenant's forwarding address and the tenant's witness was unable to confirm what document was served to the landlord or on what date. As such, I find that the tenant has not provided sufficient evidence, on a balance of probabilities, to prove that the landlord was served with his forwarding address on June 1, 2018.

However, the tenant's Application for Dispute Resolution, which forms part of the Notice of Dispute Resolution Proceeding for this hearing, contains a written "Address for Service of Documents" for the tenant. The landlord's agent confirmed that the Notice for this hearing was served to him in person by the tenant.

Accordingly, I deem that the landlord is now in receipt of a written forwarding address for the tenant as provided in the tenant's Application for Dispute Resolution for this hearing. This finding triggers the landlord to take one of the following actions under section 38(1) of the *Act* as follows:

- (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.

As such, I find the tenant's Application to recover the security deposit is premature and the landlord may still address the tenant's security deposit in accordance with the above-noted provisions of section 38 of the *Act*. Given this finding, I do not find that the tenant is entitled to the recover the filing fee from the landlord for this application.

To clarify, this means that the landlord has 15 days from the deemed receipt date of this decision to address the tenant's security deposit in accordance with section 38 of the *Act*. The deemed receipt date of this decision is five days from the date of this decision. The date of this decision is noted in the Conclusion section of this decision. Should the landlord fail to address the security deposit within that timeline, the tenant will be at liberty to reapply for dispute resolution to claim double the amount of the security deposit pursuant to section 38(6) of the *Act*.

Conclusion

Accordingly, I dismiss the tenant's application with leave to reapply to request the return of double the security deposit, should the landlord fail to address the security deposit in accordance with 38 of the *Act*, within 15 days of the deemed receipt date of this decision. The tenant bears the cost of the filing fee for this application.

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 2, 2018

Residential Tenancy Branch