



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenant applied for the return of double their security deposit, and to recover the cost of the filing fee.

The tenant appeared at the teleconference hearing. The tenant gave affirmed testimony. The hearing process was explained to the tenant. During the hearing the tenant presented their evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), the application and documentary evidence were considered. The tenant provided affirmed testimony that the Notice of Hearing, application and documentary evidence were served on the landlord by registered mail on October 12, 2018 and was addressed to the landlord's home where the landlord lived upstairs and the tenant was renting the basement suite. The tenant provided a registered mail tracking number, which has been included on the cover page of this decision for ease of reference as "1". Documents sent by registered mail are deemed served five days after mailing pursuant to section 90 of the *Act*. The tenant testified that the registered mail package was returned as "unclaimed". I find the landlord was duly served on the fifth day after mailing on October 17, 2018, in accordance with the *Act*. I note that refusal or neglect on the part of the respondent to accept a registered mail package does not constitute a ground for an Application for Review Consideration under the *Act*. As the landlord failed to attend the hearing, I consider this application to be undisputed by the landlord. The hearing continued without the landlord present a result.

Preliminary and Procedural Matters

The tenant confirmed their email address at the outset of the hearing. The tenant also confirmed their understanding that the decision would be emailed to the tenant and sent by regular mail to the landlord as an email address was not provided for the landlord. The tenant also confirmed their understanding that any applicable order would be emailed to the tenant.

In addition to the above, I have included BSMT in the rental unit description in accordance with section 64(3) of the *Act* to ensure clarity.

Issues to be Decided

- Is the tenant entitled to the return of double their security deposit under the *Act*?
- Is the tenant entitled to the return of the filing fee under the *Act*?

Background and Evidence

The tenant affirmed that although a written tenancy agreement existed between the parties, a copy was not submitted in evidence. The tenant testified that a fixed-term tenancy began on July 1, 2018 and ended by way of a undisputed 1 Month Notice to End Tenancy for Cause as of September 10, 2018, when the tenant returned the rental unit keys in the rental unit and vacated. During the tenancy, monthly rent was \$1,000.00 per month and was due on the first day of each month. The tenant confirmed that she paid a \$500.00 security deposit at the start of the tenancy, which the landlord continues to hold.

The tenant is seeking \$1,100.00, comprised of double the return of the \$500.00 security deposit for the landlord failing to return the security deposit, and to recover the cost of the \$100.00 filing fee.

The tenant testified that she provided her written forwarding address to the landlord by registered mail dated September 17, 2018. The tenant submitted a registered mail tracking number in evidence, which has been included on the cover page of this decision for ease of reference as “2”. The tenant affirmed that the package mailed on September 17, 2018, was addressed to the landlord’s address and was returned to sender as “unclaimed”. The tenant’s written forwarding address has also been included on the cover page of this decision for ease of reference. The tenant testified that the

landlord has not returned any portion of her security deposit even though the landlord stated to the tenant that he would be doing so.

Analysis

Based on the undisputed documentary evidence and the tenant's undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The tenant testified that the landlord was mailed the tenant's written forwarding address by registered mail on September 17, 2018. I find the landlord is deemed served five days later with the written forwarding address pursuant to section 90 of the *Act*, which is September 22, 2018. I accept the tenant's undisputed testimony that the landlord has failed to return any portion of the tenant's \$500.00 security deposit. Section 38 of the *Act* applies which states:

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.

(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.

[Emphasis added]

In the matter before me, I find that the landlord breached section 38 of the *Act* by failing to return the security deposit in full to the tenant within 15 days of receiving the forwarding address of the tenant in writing as of September 22, 2018. Therefore, as the landlord also failed to make a claim against the tenant's security deposit within 15 days of September 22, 2018, I find the tenant is entitled to the return of double the original security deposit of \$500.00 for a total of **\$1,000.00**. I note that the tenant's security deposit accrued \$0.00 in interest since the start of the tenancy.

As the tenant's application was successful, I grant the tenant the recovery of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

Monetary Order – I find that the tenant has established a total monetary claim in the amount of **\$1,100.00**, comprised of \$1,000.00 for the doubled security deposit, plus the \$100.00 filing fee. I grant the tenant a monetary order pursuant to section 67 of the *Act* in the amount of **\$1,100.00**.

Conclusion

The tenant's application is fully successful. The tenant has established a total monetary claim of \$1,100.00 comprised of the return of double their security deposit in the amount of \$1,000.00, plus the \$100.00 filing fee. The tenant has been granted a monetary order under section 67 of the *Act* in the amount of \$1,100.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

I caution the landlord not to breach section 38 of the *Act* in the future.

This decision will be emailed to the tenant and mailed by regular mail to the landlord as described above.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: February 5, 2019

Residential Tenancy Branch