



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNSD**

Introduction

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

- An order that the landlord return all or part of a security deposit pursuant to section 38; and
- Authorization to recover the filing fee pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:41 p.m. to enable the landlord to call into this hearing scheduled for 1:30 p.m.

The tenant KB attended the hearing and was given a full opportunity to be heard, to present affirmed 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. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

In accordance with Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* ("Rules"), this hearing was conducted in the absence of the landlord.

The tenant testified that he served the landlord with the Application for Dispute Resolution hearing package by registered mail on November 23, 2018. A copy of the registered mail tracking receipt was provided as evidence, referenced on the cover page of this decision. Based on the evidence of the tenant, I find the landlord s deemed served with the Application for Dispute Resolution hearing package on November 28, 2018, five days after the registered mailing, pursuant to section 89 and 90 of the *Act*.

Issue(s) to be Decided

- Is the tenant entitled to a return of the security deposit?
- Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

A copy of the tenancy agreement was provided as evidence. This one-year fixed term tenancy began on May 1, 2018 with rent set at \$1,300.00 per month. A security deposit of \$650.00 was provided to the landlord on April 7, 2018 when the tenancy agreement was signed.

The tenant testified he gave notice to end the tenancy effective October 31, 2018 by emailing the landlord on October 18, 2018. In his email, he sought the landlord's consent to end the tenancy. The tenant testified the landlord was not amenable to ending the fixed term tenancy on such short notice.

On October 31, 2018, when returning the keys to the landlord, the tenant asked the landlord to return the security deposit. The landlord advised the tenant that she was keeping the deposit because the tenant broke the lease, but she agreed that she would discuss the matter with her mother, the co-landlord.

On November 6, 2018, the tenant sent a further email to the landlord asking if she spoke to her mother regarding the security deposit and also provided his forwarding address. A copy of the email was provided as evidence.

The tenant testified that after filing for dispute resolution he received an email from the landlord on February 27, 2019. The tenant provided the email address of the landlord from which the message was sent. The email stated the landlord would not be attending this hearing because it is impossible for the landlord to participate during work hours. In the email, the landlord asks the tenant if he would be willing to accept \$325.00 of the security deposit with the landlord retaining the other half as costs from the tenancy.

Analysis

The tenant gave undisputed testimony that he provided the forwarding address to the landlord by email. The email address sent by the landlord to the tenant on February 27, 2018 matches the email address to which the notice of forwarding address was sent.

While section 88 of the *Act* does not recognize email as a method of service of documents generally, the tenant has shown the form of communication established by the parties is through email. I find that the forwarding address was sufficiently served upon the landlord by email on November 6, 2018 in accordance with section 71(2)(b).

Section 38 of the *Act* addresses the return of security deposits.

- 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.

Given the finding that the landlord received the tenant's forwarding address in writing on November 6, 2018, she had fifteen days, or until November 21, 2018 to either return the deposit or file an application for dispute resolution.

Residential Tenancy Branch Policy Guideline PG-17 says, in part C-3:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;

In this case, the tenant did not specifically waive the doubling of the deposit. Section 38(6) requires that the arbitrator order the tenant's security deposit of \$650.00 be doubled to \$1,300.00.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Item	amount
Security deposit return	\$650.00
Doubling provision pursuant to section 38(6)	\$650.00
Filing fee	\$100.00
Total	\$1,400.00

Conclusion

I find the tenant is entitled to monetary compensation pursuant to section 67 in the amount of **\$1,400.00**.

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: March 11, 2019

Residential Tenancy Branch