



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This is an application by the tenant) filed under the Residential Tenancy Act (the “Act”) for a monetary order for return of the security deposit (the “Deposit”), the cost of a repair and the filing fee for the claim.

The tenant’s agent attended the hearing. As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant’s agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on December 10, 2018, to two different addresses, Canada post tracking numbers were provided as evidence of service. The agent testified that they were returned unclaimed. The Canada post tracking numbers are noted on the covering page of this decision.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the landlord has been duly served in accordance with the Act. Refusal or neglect to pick up the packages is not grounds for review.

The tenant’s agent appeared, gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the tenant entitled to a monetary order for return of the Deposit and for the cost of a repair?

Background and Evidence

The tenancy began on September 1, 2017. Rent in the amount of \$2,800.00 was payable on the first of each month. A security deposit of \$2,800.00 was paid by the tenant.

The tenant's agent testified that they vacated the premises at the end of February 2018. The agent stated that they provided the landlord with a written notice of the forwarding address on September 5, 2018, sent by regular mail. The agent stated that the landlord also had their address by email.

The tenant's agent testified that the landlord had corresponded with them; however, the landlord did send them their security deposit. . Filed in evidence are email correspondences between the parties

The tenant's agent testified that they had to replace a smoke detector and the landlord was to repay them the amount of \$76.45. The tenant seeks to recover the cost for the repair. Filed in evidence is a receipt.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

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.

...

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(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.

In this case, there was no evidence that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address, which was given on September 5, 2018.

I find the landlord has breached 38(1) of the Act.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlord did not have any authority under the Act to keep any portion of the Deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pays the tenant the sum of **\$5,600.00**, comprised of double the security deposit (\$2,800.00).

I accept the undisputed evidence that the tenant's agent that they had to replace the smoke detector and that the landlord agreed to repay the cost. I find the tenant is entitled to recover the cost of the smoke detector in the amount of **\$76.45**.

I find the tenant has established a total monetary of **\$5,776.45** comprised of the above amounts and to recover the \$100.00 fee for filing this Application.

The tenant is given a formal monetary order pursuant to 67 of the Act, in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court. The landlord **is cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant is granted a monetary order in the above noted amount.

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: April 1, 2019

Residential Tenancy Branch