



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT

Introduction

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

- authorization to obtain a return of all or a portion of his security deposit pursuant to section 38;
- a monetary order for compensation for under the Act, for the landlord failing to timely return the security deposit pursuant to section 38; and,
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service of the notice of hearing. I find the parties were served in accordance with the Act.

However, the landlord testified that he did not receive the tenant's evidence which consisted of an envelope post-dated November 14, 2018 and a copy of the tenancy agreement. The landlord testified that he did not need a copy of the tenancy agreement since he already had a copy. I read the entirety of the text on the envelope to the landlord during the hearing and the landlord had no objections to this evidence. Since the landlord did not object to the tenant's evidence, I admit the tenant's evidence and consider it herein in my decision.

Issue(s) to be Decided

Is the tenant entitled to a return of all or a portion of his security deposit pursuant to section 38?

Is the tenant entitled to a monetary order for compensation for under the *Act*, for the landlord failing to timely return the security deposit pursuant to section 38?

Is the tenant entitled to recover his filing fee for this application from the landlord pursuant to section 72.

Background and Evidence

The parties agreed that the tenancy started on October 1, 2017 with a monthly rent of \$1,098.00 and the tenant paid a \$549.00 security deposit.

The tenant testified that the tenancy was a fixed term tenancy and he moved out on October 31, 2018 at the expiration of the fixed term. The landlord testified that the tenant moved out of the rental unit early without providing notice.

The tenant testified that he provided written notice of his forwarding address on November 14, 2018. The tenant provided a copy of an envelope which was addressed to the landlord's property management company. The envelope had an address in the upper left portion of the envelope which the tenant stated was his return address, the return address does not have a name. The envelope was stamped and dated by Canada Post on November 14, 2018.

The tenant stated that a letter was enclosed in the envelope which stated the tenant's return address. However, the tenant did not provide a copy of the letter. The landlord testified that he did not receive a copy of this letter.

The landlord testified that he did not have the tenant's forwarding address until he received the application for dispute resolution in January 2019. The landlord testified that he mailed the tenant a cheque in the amount of \$549.00 in January 2019 as a full refund of the security deposit.

The tenant testified that he received the cheque in the amount of \$549.00 from the landlord in January 2019. However, the tenant testified that he destroyed the cheque because he felt that he was entitled to a refund of double the security deposit and he did

not want to accept a lesser amount. The landlord testified that he did not know whether or not the refund cheque has been deposited or cashed.

The tenant requested a monetary order for \$1,098, representing double the security deposit, and reimbursement of the filing fee.

Analysis

Section 38 of the *Act* states that:

- 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.

Residential Tenancy Branch Rules of Procedure ("RTB Rules"), Rule 6.6 states that the applicant, in this case the tenant, has the onus to prove their case on a balance of probabilities. This means that RTB Rule 6.6 requires the tenant to prove that, more likely than not, the facts occurred as claimed in order to prevail in his claim.

Based on the testimony of the tenant, I find that the tenancy ended on October 31, 2018 when the tenant moved out. However, I find that the tenant has not provided sufficient evidence to satisfy his onus of proving that the tenant provided his forwarding address on November 14, 2018 as the tenant alleged.

Section 38 requires the forwarding address be sent in writing. However, the tenant has not provided the letter which purports to provide the forwarding address. The tenant provided an envelope which allegedly contained the letter with the tenant's forwarding address. However, the tenant did not provide a copy of the actual letter which stated his forwarding address. I find that this is not sufficient evidence that the tenant did in fact provide his forwarding address in writing.

Furthermore, the tenant argued that he provided his forwarding address on the envelope itself because his forwarding address was stated on the face of the envelope. However, I do not find this argument persuasive. The tenant's return address does appear on the envelope. However, the address is not identified as the tenant's forwarding address. There is no name stated above the address on the envelope. As such, the envelope does not provide notification as to whose address is on the envelope. I find that this is not sufficient disclosure in writing of the tenant's forwarding address as required by section 38.

Both parties testified that the tenant's application for dispute resolution was sent to the landlord in January 2019. As the application for dispute resolution includes the tenant's address, I find that the landlord did receive the tenant's forwarding address in writing in January 2019. Neither party provided any testimony as to the specific date in January 2019 that the application for dispute resolution was sent or received in January 2019. In the absence of specific evidence, I find that the forwarding address was sent to the landlord on writing in January 2019.

Pursuant to section 38, the landlord had fifteen days from the receipt of the tenant's forwarding address to dispute or return the security deposit. The parties both agreed that the landlord sent the tenant the entire deposit in January 2019. However, neither party provided any evidence as to the specific date in January 2019 that the tenant received the return of his deposit.

Based on the testimony of both parties that the landlord provided a full refund of the security deposit in January 2019, I find that the landlord has satisfied his obligation to refund the deposit pursuant to section 38. The landlord is obligated under section 38 to return the security deposit which I find the landlord fully satisfied by delivering the refund cheque.

However, it is not clear from the evidence presented whether the refund cheque has been deposited or whether the tenant still has a negotiable cheque in his possession. The landlord testified that he had not checked with his accountant or his bank prior to the hearing to verify whether the cheque has been deposited. The tenant testified that he destroyed the previously submitted refund cheque but the tenant did not provide any proof that the cheque had been cancelled or destroyed.

Accordingly, to ensure that the tenant is fully compensated with a refund of his security deposit pursuant to section 38 of the *Act*, and to protect the landlord from overpayment, I order the landlord to make another payment of \$549.00 to the tenant if the previous

cheque has not been deposited. Furthermore, I order that the landlord may deduct from this payment the cheque cancellation fee that his financial institution charges to cancel the original refund cheque.

Furthermore, I find that the tenant failed to provide sufficient evidence that the security deposit was not returned to him within fifteen days of the landlord's receipt of the tenant's forwarding address as required by section 38. The parties both agree that the application for dispute resolution and the refund cheque were both delivered at some date in January 2019. However, without further evidence as to the specific dates, I am unable to determine whether the landlord sent the tenant the refund cheque within fifteen days. Since the tenant has the onus of proving that the refund cheque was not sent within fifteen days of the receipt of the forwarding address and the tenant has failed to provide satisfactory evidence of the specific dates, I deny the tenant's request for an order for double the security deposit.

In the absence of sufficient evidence to establish that the tenant had provided his forwarding address in writing prior to filing the application, I find that this application has been filed prematurely. Accordingly, I dismiss the tenant's application for recovery of the filing fee.

Conclusion

The tenant's application for return of the security deposit is granted and I order the landlord to pay the sum of \$549.00 to the tenant, if the previous refund cheque has not been deposited. The landlord may deduct the cheque cancellation fee that his financial institution charges to cancel the original refund cheque from this payment. If the landlord fails to comply with this order, the tenant may file the order in the Provincial Court to be enforced as an order of that Court.

The tenant's application for return of double the security deposit is denied.

The tenant's application to recover his filing fee for this application is dismissed.

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 18, 2019