



Dispute Resolution Services

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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:

- a Monetary Order for the return of the security deposit and pet damage deposit, pursuant to sections 38 and 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant and the landlord's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that the landlord was served with her application for dispute resolution via registered mail. The landlord's agent testified that the landlord received the tenant's application via registered mail on January 10, 2019. I find that the landlord was served in accordance with section 89 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit and pet damage deposit, pursuant to sections 38 and 67 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 1, 2018 and ended on October 1, 2018. Monthly rent in the amount of \$1,000.00 was payable on the first day of each month. A security deposit of \$440.00 and a pet damage deposit of \$500.00 (the "deposits") were paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The landlord returned \$500.00 of the deposits to the tenant on October 2, 2018.

The tenant testified that she posted an envelope containing her forwarding address on the landlord's door. The tenant testified that she could not recall the specific date she posted it on the landlord's door but testified that it was between October 1, 2018 and October 31, 2018. The tenant entered into evidence photographs of an envelope with the landlord's address on it, posted to the landlord's door. The address of the landlord's home is visible in one of the photographs of the envelope posted to the door. The tenant testified that she printed the photographs on October 31, 2018 and that is why that date is on the photographs.

The landlord's agent denied that the landlord received the tenant's forwarding address and that in any event the address on the envelope was that of the landlord, not the tenant's new address. The tenant testified that her forwarding address was in a letter inside the envelope and that the envelope bore the landlord's address because it was being sent to the landlord.

Analysis

Section 88(g) of the *Act* states that all documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person may be served by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord.

Section 90 of the *Act* states that a document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*], unless earlier received, is deemed to be received if given or served by

attaching a copy of the document to a door or other place, on the 3rd day after it is attached.

I find that the landlord's agent's assertion that the forwarding address was not provided because the envelope it was contained in had the landlord's address on it to be unreasonable. I find the tenant's testimony to be more credible as the landlord's agent's arguments are not in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances (*Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.)).

Taking into consideration both the tenant's testimony and photographic evidence, I find that the tenant has proved, on a balance of probabilities, that she posted her forwarding address on the landlord's door sometime in October of 2018. I find that the tenant is entitled to rely on the deeming provisions of Section 90 of the *Act*. I find that the landlord is deemed to have received the tenant's forwarding address by November 3, 2018.

Section 38 of the *Act* requires the landlord to either return the tenant's security and pet damage deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security and pet damage deposits.

However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

Section C(3) of Policy Guideline 17 states that unless the tenants have specifically waived the doubling of the deposits, either on an application for the return of the deposits or at the hearing, the arbitrator will order the return of double the deposits.

In this case, the landlord did not file an application with the Residential Tenancy Branch to retain the tenant's security and or pet damage deposits nor did the landlord return all of the tenant's deposits within 15 days of receipt of the tenant's forwarding address in writing. Therefore, pursuant to section 38(6)(b), the landlord is required to pay to the tenant double her deposits, according to the following calculation:

\$940.00 (total of deposits) *2 (doubling provision) - \$500.00 (amount returned to tenant) = **\$1,380.00**

As the tenant was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenant in the amount of **\$1,480.00**.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 23, 2019

Residential Tenancy Branch