



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

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

- a monetary order for the return the tenant's security deposit pursuant to section 38; and,
- a monetary order for double the amount of the tenant's security deposit pursuant to section 38 for failing to timely return the tenant's security deposit.

The tenant attended the hearing. The tenant had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The landlord did not attend the hearing. I kept the teleconference line open for the duration of the hearing to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct participant code was provided to the landlord.

The tenant testified that he served the landlord with the Notice of Hearing and Application for Dispute Resolution and his evidence by registered mail sent on March 26, 2019. The notice of hearing and the tenant's evidence are deemed received by the landlord five days later, on March 31, 2019 pursuant to section 90 of the *Act*. The tenant provided the Canada Post tracking number in support of his service which is referenced on the first page of the decision. Based on the undisputed testimony of the tenant, I find the tenant served the landlord with the documents pursuant to section 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for the return the tenant's security deposit pursuant to section 38?

Is the tenant entitled to a monetary order for double the amount of the tenant's security deposit pursuant to section 38 for failing to timely return the tenant's security deposit?

Background and Evidence

The tenancy had a fixed term starting on November 1, 2018 with an end date of August 31, 2019. The rent was \$1,100 per month and the tenant provided a \$550.00 security deposit. The tenant provided a copy of the tenancy agreement as evidence.

The tenant testified that the tenancy ended early because the landlord evicted him. The tenant testified that he moved out of the property on January 10, 2019.

The tenant testified that he did a walkthrough of the rental unit with the landlord when he moved out. However, the tenant testified that he did not sign the condition inspection report because he disagreed with the wording in the document.

On January 14, 2019, the tenant sent the landlord a letter by registered mail which stated the tenant's forwarding address. The Canada Post tracking number for this mailing is referenced on the first page of this decision. The tenant provided a copy of the letter as evidence.

The tenant testified that he did not enter any agreements with the landlord regarding the surrender of any portion of the security deposit. Furthermore, the tenant testified that the landlord never returned any portion of the security deposit. In addition, the tenant testified that the landlord never filed an application to dispute the security deposit.

Analysis

Based on the tenancy agreement and the tenant's undisputed testimony, I find that the tenant has provided a security deposit of \$550.00. The tenant has requested a return of this security deposit and an order for double the amount of the security deposit for failing to return the deposit within 15 days pursuant to section 38 of the *Act*.

Section 38 states that landlord must return security deposit, or file an application to dispute the return of the deposit, within 15 days after the tenancy ends and the tenants have provided their forwarding address in writing.

In this matter, based on the tenant's undisputed testimony, I find that the tenancy ended on January 10, 2019. Furthermore, based on the tenant's undisputed testimony and the tenant's letter dated January 14, 2019, I find that the tenant provided the landlord with his forwarding address in writing on January 14, 2019. Pursuant to section 90 of the *Act*, the landlord is deemed to have received the tenant's forwarding address five days later, being January 19, 2019.

Accordingly, pursuant to section 38, the landlord had 15 days after she was deemed to have received the forwarding address on January 19, 2019 to return the security deposit or file an application to dispute the return of the deposit. This deadline expired on February 3, 2019. Base on the tenant's undisputed testimony, I find that the landlord did not return the security deposit or file an application to dispute the return of the security deposit prior to the expiration of the February 3, 2019 deadline. Accordingly, I find that the landlord has not complied with section 38 of the *Act*.

Section 38 of that *Act* states that, if a landlord does not comply with this section, the landlord must pay the tenant an amount equal to double the security deposit. Since I have found that the landlord has not complied with section 38, I order the landlord to pay the tenant an amount equal to double the security deposit, being \$1,100.00

Conclusion

I grant the tenant a monetary order in the amount of **\$1,100.00**. 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.

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 26, 2019

Residential Tenancy Branch