



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on February 01, 2019 (the “Application”). The Tenant applied for return of the security deposit and reimbursement for the filing fee.

The Tenant filed an amendment changing the name of one of the Landlords.

The Tenant appeared at the hearing. Nobody appeared at the hearing for the Landlords. I explained the hearing process to the Tenant who did not have questions when asked. The Tenant provided affirmed testimony.

The Tenant had submitted evidence prior to the hearing. The Landlords had not. I addressed service of the hearing package and Tenant’s evidence.

The Tenant testified that the hearing package, amendment and evidence were sent to the Landlords by registered mail on February 07, 2019. The Tenant testified that the packages were sent to the Landlords’ address as located through a land title search. The Tenant had submitted photos of the packages, customer receipts and the land title search.

The packages have Tracking Number 1 and 2 on them. I looked these up on the Canada Post website which shows both packages were delivered and signed for February 08, 2019.

Based on the undisputed testimony of the Tenant, evidence of service submitted and Canada Post website information, I accept pursuant to section 71(2) of the *Residential Tenancy Act* (the “Act”) that the Landlords were sufficiently served.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Landlords. The Tenant was given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence pointed to during the hearing and oral testimony of the Tenant. I have only referred to the evidence I find relevant in this decision.

I note that it was obvious throughout the hearing that the Tenant continued to engage in other activities unrelated to the hearing despite being asked not to and despite confirming that he would not do so.

Issues to be Decided

1. Is the Tenant entitled to return of the security deposit?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant sought the following compensation:

1. 2017 filing fee \$100.00
2. 2018 filing fee \$100.00
3. Title search on property \$29.02
4. Late return of deposit \$825.00
5. Filing fee \$100.00

The Tenant testified as follows. There was a written tenancy agreement in this matter. The tenancy started August of 2016. The Tenant paid a \$825.00 security deposit.

The Tenant's materials indicated that there were two prior hearings between these parties, the file numbers of which are noted on the front page of this decision.

File Number 1 was the Tenant's application for return of his security deposit and recovery of the filing fee. Both parties attended the hearing. The decision states as follows:

At the outset of the hearing the Tenant confirmed that he only provided his forwarding address to the Landlord by text message.

Text messaging is not an acceptable means of delivering a forwarding address for the purposes of section 38 of the Act. As such, I find the Tenant's Application to be premature as, pursuant to sections 38(1) and 39, the Landlord has 15 days from the latter of the end of the tenancy or receipt of a forwarding address in writing to return the funds or make an Application for Dispute Resolution.

I therefore dismiss the Tenant's Application for Dispute Resolution with leave to reapply...

For the purposes of section 38(1) I find that the Landlord is in receipt of the Tenant's forwarding address as of the date of the hearing, April 12, 2018. The Landlord has 15 days from today's date in which to return the security deposit to the Tenant or make an Application for Dispute Resolution. I confirm I informed both parties of this during the hearing and they acknowledged their understanding of this.

File Number 2 was the Tenant's application for return of double the security deposit due to the Landlord returning the deposit late. He also sought reimbursement for the filing fee. Neither party called into the teleconference for the hearing and therefore the application was dismissed with leave to re-apply.

At this hearing, the Tenant confirmed that the Landlord had returned the original security deposit amount within 15 days of the April 12, 2018 decision. The Tenant sought return of double the security deposit.

Analysis

The relevant sections of the *Act* are as follows:

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(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [2 opportunities for inspection],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

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(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) [2 opportunities for inspection],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

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...

[emphasis added]

The Tenant seemed to be under a misunderstanding in relation to the basis for the April 12th decision. I understood the Tenant to submit that the Arbitrator did not consider the text message evidence. I explained to the Tenant that this was not the basis for the decision. I explained that the Arbitrator found text message insufficient for the purposes of section 38(1) of the *Act*. I note that this is clear from the decision as referenced above.

The Arbitrator deemed the Landlord to have received the forwarding address April 12th, the date of the decision. This triggered section 38(1) of the *Act* and the Landlord had 15 days to repay the security deposit or claim against it.

At this hearing, the Tenant confirmed the Landlord returned the deposit within 15 days of the April 12th decision. Therefore, the Landlord complied with section 38(1) of the *Act* and the Tenant is not entitled to return of double the security deposit pursuant to section 38(6) of the *Act*.

I note that the provisions regarding extinguishment do not apply because the Landlord did not claim against the security deposit but returned the deposit to the Tenant within 15 days of receiving the forwarding address as required by section 38(1) of the *Act*.

The Tenant took issue with the April 12th decision. I explained to the Tenant that I do not have authority to change that decision. The Arbitrator determined the issue of whether the Tenant had provided the Landlord with his forwarding address in a proper form such that section 38(1) of the *Act* was triggered. That issue is *res judicata*. It cannot be reargued or reconsidered. The April 12th decision on that issue stands.

Nor is the Tenant entitled to the filing fee for File Number 1. The Tenant applied for reimbursement for the filing fee and the Arbitrator did not award the Tenant this. A decision has therefore been made on this matter and it cannot be reargued or reconsidered. Further, parties are entitled to reimbursement for the filing fee when they are successful in their application. The Tenant was not successful in his application as it was dismissed.

Nor is the Tenant entitled to the filing fee for File Number 2. Again, the Tenant sought reimbursement for the filing fee and the Arbitrator did not award the Tenant this. A decision has therefore been made on this matter and it cannot be reargued or reconsidered. Again, parties are entitled to reimbursement for the filing fee when they are successful in their application. The Tenant was not successful in his application as he did not appear at the hearing and the application was dismissed.

The Tenant is not entitled to reimbursement for the cost of doing the land title search. The Tenant did this to file the Application and serve the Landlords the hearing package and evidence. The costs associated with serving documents or preparing for dispute resolution hearings are not recoverable by parties, other than the filing fee pursuant to section 72(1) of the *Act*.

Given the Tenant was not successful in this application, the Tenant is not entitled to reimbursement for the filing fee.

The Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: May 27, 2019

Residential Tenancy Branch