



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNSD**

Introduction

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

- A monetary order for a return of a security deposit pursuant to section 38; and
- Authorization to recover the filing fees from the landlord for this application pursuant to section 72.

The tenant attended at the date and time set for the hearing of this matter. The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

As only the tenant attended the hearing, I asked the tenant to confirm that he had served the landlord with the Notice of Dispute Resolution Proceeding for this hearing. The tenant testified that he had served the landlord with the notice of this hearing and his evidence by Canada Post registered mail on April 11, 2019 and referred to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. The tenant testified he served the landlord at the address provided to him on the landlord's 2 Month Notice to End Tenancy for Landlord's Use. I find that the landlord was served with the documents for this hearing in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for a return of a security deposit and recovery of the filing fees from the landlord?

Background and Evidence

A copy of the tenancy agreement was provided as evidence by the tenant. This fixed six month tenancy began on April 15, 2011, continuing on as a month to month tenancy at the end of the fixed term. Rent was set at \$1,050.00 per month. A security deposit in the amount of \$550.00 was collected and is still being held by the landlord. The landlord did not offer the tenant an opportunity to participate in a condition inspection at the commencement of the tenancy.

The tenant provided the following testimony. On January 15, 2019 the landlord served him with a Two Month Notice to End Tenancy for Landlord's Use ("Notice") with an effective date of March 15, 2019. In accordance with the Notice, the tenant moved out on March 15, 2019.

On March 23, 2019 the tenant sent a text message to the landlord to advise him of his forwarding address and ask for a return of the security deposit. Communication between the landlord and tenant is regularly done through text message and email, with text message being preferred. To date, the tenant has not received it back from the landlord.

Analysis

Section 38(1) of the *Act* states the landlord's responsibilities at the conclusion of a tenancy, reproduced below.

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.

If the landlord does not comply with section 38(1) of the *Act*, section 38(6) of the *Act* applies.

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.

The tenancy ended on March 15, 2019 in accordance with the Notice. I am satisfied the tenant provided the landlord with written notice of his forwarding address on March 23,

2019 and that the landlord did not return it within 15 days or file an application for dispute resolution to retain it. He had until April 7, 2019 to do so.

Section 38(1)(b) requires I double the amount of the \$550.00 security deposit to \$1,100.00. I award the tenant a monetary award in that amount.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,200.00. 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: May 06, 2019

Residential Tenancy Branch