



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order for the return of double the \$400.00 security deposit, and to recover the \$100.00 cost of their Application filing fee.

The Tenant, a witness for the Tenant, W.S. ("Witness"), and the Landlord, W.S., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party.

I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision. At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties and any orders sent to the appropriate Party.

The Tenant said he served the Landlord with the Application and documentary evidence via registered mail, and he provided a Canada Post tracking number as supporting evidence. However, the Landlord said that he did not receive anything from the Tenant about the hearing. During the hearing, I checked the Canada Post tracking number online and discovered that the Tenant's package was delivered to where it was sent.

The Landlord uploaded evidence to the RTB website and said he served this on the Tenant via registered mail, as well. The Landlord provided a copy of a Canada Post tracking number to support his evidence of service. The Tenant said that he received a copy of the tenancy agreement and the 10 Day Notice to End the Tenancy for Unpaid Rent ("10 Day Notice") from the Landlord; however, the Tenant said he did not receive everything to which the Landlord referred in the hearing.

Therefore, for the purposes of this decision, I am only considering the documents that the Parties indicated having received from the other Party.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on September 1, 2018, and was to run to February 28, 2019, and then become a periodic tenancy. The Parties agreed that the Tenant paid the Landlords a monthly rent of \$850.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlords a security deposit of \$400.00, and no pet damage deposit.

The Tenant said that the Landlord issued a 10 Day Notice dated February 2, 2019, but the Landlord denied this; however, the Landlord uploaded a copy of a 10 Day Notice that gives the vacancy effective date as February 12, 2019. The evidence in the 10 Day Notice is that it was served on February 2, 2019, by posting it on the Tenant's door. According to section 90 of the Act, the 10 Day Notice is deemed received three days later or on February 5, 2019. Given this, the vacancy effective date would have been on February 15, 2019.

The Tenant's undisputed evidence is that he was living in a new rental unit and had changed his address on his driver's license as of February 14, 2019; accordingly, I find that the tenancy ended on February 14, 2019.

The Tenant said that he gave the Landlords his forwarding address in writing by taping it on their door on February 4, 2019. According to section 90 of the Act, this notice was

deemed served on the Landlords on February 7, 2019.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

I find that the Tenant provided his forwarding address to the Landlords on February 7, 2019, and that the tenancy ended on February 14, 2019. Section 38(1) of the Act states the following:

Section 38 of the Act states:

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.

The Landlords were required to return the \$400.00 security deposit within fifteen days of February 14, 2019, namely by March 1, 2019, or make an application for dispute resolution to claim against the security deposit, pursuant to Section 38(1). The Landlords provided no evidence that they returned any amount of the security deposit or applied to the RTB for dispute resolution, claiming against the security deposit. Therefore, I find the Landlords failed to comply with their obligations under Section 38(1).

Section 38(6)(b) states that if a landlord does not comply with section 38(1) that the landlord must pay the tenant double the amount of the security deposit. There is no interest payable on the security deposit.

I, therefore, award the Tenant \$800.00 from the Landlord in recovery of double the security deposit. Given that the Tenant was successful in his Application, I also award him recovery of the \$100.00 Application filing fee for a total award of \$900.00.

Conclusion

The Tenant's claim against the Landlords for return of double the security deposit is successful in the amount of \$800.00. The Landlords did not return the Tenant's security deposit or apply for dispute resolution within 15 days of the later of the end of the tenancy and the Landlords receiving the Tenant's forwarding address. I award the Tenant with double the amount of the \$400.00 security deposit, plus recovery of the \$100.00 Application filing fee.

I grant the Tenant a monetary order under section 67 of the Act from the Landlords in the amount of \$900.00.

This order must be served on the Landlords by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: June 26, 2019

Residential Tenancy Branch