



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 return of the security deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was represented by their agent. The tenant represented herself with the assistance of a family member.

The tenant testified that they served their application for dispute resolution and evidence on the landlord by registered mail sent to the landlord's agent on March 5, 2019. The tenant provided a Canada Post tracking number as evidence of service. The landlord's agent disputed that the landlord was served with the tenant's materials, submitting that the landlord resides out of the country.

Issue(s) to be Decided

Are the tenants entitled to a return of the security deposit?

Background and Evidence

The parties agreed on the following facts. This tenancy began in August 2017 and the tenants moved out by December 1, 2018. A security deposit of \$1,150.00 was paid at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at any time for this tenancy. The tenant gave their forwarding address in writing to the landlord by a letter dated December 7, 2018 sent to the landlord's agent.

The tenant testified that they have not given written authorization that the landlord may retain any portion of the security deposit.

A copy of the tenancy agreement was submitted into documentary evidence. The landlord has failed to provide a mailing address for service on the tenancy agreement but has provided the contact phone number and name of the landlord's agent.

The landlord gave some evidence that this is a fixed term tenancy and the tenants gave notice for a date earlier than that specified in the agreement.

Analysis

In accordance with section 13 of the Act, a tenancy agreement must set out the address for service of the landlord or the landlord's agent. In the present case the landlord has failed to comply as they have not provided a service address while they have provided a name of an agent and a phone number.

The landlord's agent disputes that the landlord was served with any of the tenant's materials. I find that it is not open for the landlord to evade service by failing to provide a service address. Under the circumstances I find that the tenant has served all pertinent documents including their forwarding address, application and evidence to the landlord's agent set out on the tenancy agreement.

Based on the evidence I find that in accordance with section 71 of the Act, the landlord was sufficiently served with the tenant's forwarding address on December 7, 2018. I find that the landlord is deemed to have been sufficiently served with the tenant's application and evidence on March 10, 2019, five days after mailing, in accordance with sections 71, 88, 89 and 90 of the Act.

Section 38 of the Act requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receiving a forwarding address in writing. If that does not occur, the landlord must pay a monetary award pursuant to section 38(6) of the Act equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit.

I accept the evidence of the parties that this tenancy ended on December 1, 2018 and the tenants gave a forwarding address in writing on December 7, 2018. Therefore, the landlord had 15 days from December 7, 2018 to either file an application for dispute resolution to keep the security deposit or return the deposit to the tenants in full. I find that the landlord did neither and simply kept the security deposit in contravention of the *Act*.

While the landlord made some allusion to their reason for keeping the deposit I find this to be irrelevant to the matter at hand. The landlord may not unilaterally keep a security deposit without taking the appropriate steps as required under the *Act*. A landlord is in the business of taking payment for lodgings and they must conduct themselves in accordance with the legislation. I find that the landlord's actions including their failure to provide a proper service address and failing to return the security deposit or file an application in accordance with the *Act* to be a contravention of the *Act*.

Furthermore, I accept the evidence that no condition inspection report was prepared at any time during the tenancy. Section 36 of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if they do not comply with the requirements of section 35 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

Based on the evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within 15 days of receiving the tenant's forwarding address. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$2,300.00 Monetary Order, double the value of the \$1,150.00 security deposit paid for this tenancy. No interest is payable for this period.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$2,300.00 against the landlord. The tenant are provided with a Monetary 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: June 11, 2019

Residential Tenancy Branch