



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 return of the security deposit, a monetary order for compensation for failing to timely return the security deposit and reimbursement of the filing fee.

The tenant's representative attended the hearing on behalf of the tenant. 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 from the scheduled hearing time for ten minutes 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 the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution and the tenant's evidence by registered mail sent on May 2, 2019 and deemed received by the landlord five days later, on May 7, 2019, under section 90 of the *Act*. The tenant provided the Canada Post tracking number in support of service referenced on the first page of the decision. The tenant also provided the Canada Post confirmation showing that the landlord received and signed for the package on May 17, 2019. 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 an order for return of the security deposit pursuant to section 38?

Is the tenant entitled to an award of compensation in the amount of double the security deposit pursuant to section 38 and 67?

Is the tenant entitled to recovery of the filing fee pursuant to section 72?

Background and Evidence

The tenant testified that the tenancy started on July 1, 2017. The monthly rent was \$1,150.00 and the tenant paid a security deposit of \$575.00

The tenant sent written notice of her forwarding address on January 18, 2019 by registered mail. The tenant provided the Canada Post tracking number in support of service referenced on the first page of the decision. The tenant also provided the Canada Post confirmation showing that the landlord received and signed for the document on January 23, 2019.

The tenant vacated the rental unit on February 28, 2019. The tenant sent the landlord text messages on March 20, 2019 and April 1, 2019 requesting the return of the security deposit. The tenant testified that the landlord never returned any portion of the security deposit or served the tenant with an application to dispute the security deposit.

The tenant requests monetary compensation in the amount of double the security deposit and recover of the filing fee.

Analysis

Section 38 of the *Act* states that:

- 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.

Based on the testimony of the tenant, I find that the tenancy ended on February 28, 2019 when the tenant moved out of the rental unit.

On the basis of the undisputed testimony of the tenant, I find that the tenant provided the landlord with their forwarding address by registered mail on January 18, 2019. Further, based on the tracking information provided, I find that landlord received the forwarding address on January 23, 2019.

The landlord had 15 days after the end of the tenancy and the delivery the tenants' forwarding address to repay the full deposit or file an application for dispute resolution pursuant to section 38(1) of the *Act*. Since the tenant vacated the rental unit buy February 28, 2019, the landlord's deadline to repay the deposit or file an application for dispute resolution was March 15, 2018.

I find that the landlord did not perform either of these requirements by the March 15, 2019. Accordingly, I find that the landlord is in violation of section 38(1) of the *Act*.

According to section 38(6) of the *Act*, if a landlord does not comply with section 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit. Since I have determined that the landlord has violated section 38(1) of the *Act*, I find that the landlord must pay the tenant double the amount of the security deposit.

In addition, since the tenant has been successful this matter, I award the tenants \$100.00 for recovery of the filing fee pursuant to section 72.

The total award to tenant is accordingly \$1,250.00, as set forth below:

| Item | Amount |
|--|-------------------|
| Recovery of double the security deposit (\$575.00 times 2) | \$1,150.00 |
| Filing recovered by tenants | \$100.00 |
| Total award to tenants | \$1,250.00 |

Accordingly, I order the landlord to pay the tenant the sum of \$1,250.00.

Conclusion

The landlord's right to retain the security deposit is extinguished.

I grant the tenants reimbursement of the filing fee.

I grant the tenants a monetary order in the amount of **\$1,250.00**. If the landlord fails to comply with this order, the tenants 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: July 30, 2019

Residential Tenancy Branch