



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 double the security deposit for this tenancy pursuant to section 38.

The landlord did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant attended and was given a full opportunity to make submissions, give affirmed testimony, present evidence and call witnesses.

The tenant testified that they served the landlord personally with the notice of dispute and evidence on May 17, 2019. The tenant said that they made several previous attempts to serve the landlord before successfully serving them at their vehicle. Based on the tenant's testimony I find that the landlord was served with the tenant's materials on May 17, 2019 in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a return of double the amount of the security deposit for this tenancy?

Background and Evidence

This periodic tenancy began in December, 2016 and ended on July 31, 2018. The tenant paid a security deposit of \$550.00 at the start of the tenancy and the amount is still held by the landlord. No written tenancy agreement, condition inspection report or receipts were prepared by the landlord pertaining to this tenancy.

The tenant gave the landlord their forwarding address in writing by a text message dated August 5, 2018. The tenant provided a copy of the correspondence sent to the landlord. The tenant testified that they have not given written authorization that the landlord may retain any portion of the deposit for this tenancy.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) 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 permission to keep all or a portion of the security deposit as per section 38(4)(a).

Though there is little documentary evidence pertaining to this tenancy, I accept the testimony of the tenant that they paid a security deposit of \$550.00 at the start of the tenancy and that amount is held by the landlord.

I accept the tenant's undisputed evidence, supported in documentary evidence, that the tenant provided their forwarding address in a text message dated August 5, 2018. I accept the undisputed evidence of the tenants that the landlord failed to return the full security deposit to the tenant within 15 days of August 5, 2018, the time frame granted under section 38 (1)(c) of the *Act* nor did the landlord make an application claiming against the security deposit during that period.

In addition, the tenant testified that no condition inspection report was prepared at any time during this tenancy. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

24 (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

...

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

Accordingly, I also find that the landlord has extinguished any right to claim against the security deposit by failing to prepare a condition inspection report at the start of the tenancy.

Based on the undisputed evidence before me, I find that the landlord has failed to return the tenant's security deposit in full or file an application claiming against the amount within the 15 days of August 5, 2018, as provided under section 38(1)(c) of the *Act*. 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 a \$1,100.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,100.00.

The tenant is provided with the 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 the Order, the Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: August 22, 2019

Residential Tenancy Branch