



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NW 1799
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for authorization to obtain a return of all or a portion of the security deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the "landlord") and site manager. The tenant was represented by their advocate.

The landlord confirmed receipt of the tenant's application and evidence. Based on the testimonies I find that the landlord was served with the tenant's materials in accordance with sections 88 and 89 of the *Act*.

The tenant disputed receiving the landlord's evidence. The landlord testified that they had served the tenant with their evidence by registered mail sent to the tenant's address for service on August 16, 2019. The landlord provided a valid Canada Post tracking number as evidence of service and said that online tracking shows the materials as being available at the post office for pickup. The tenant could not provide a cogent reason why they have not picked up the landlord's evidence package. In accordance with Residential Tenancy Policy Guideline 12 a document is deemed received unless there is evidence to the contrary. Based on the evidence I find that the tenant is deemed served with the landlord's evidence on August 21, 2019, five days after mailing in accordance with sections 88 and 90 of the *Act*.

Issue(s) to be Decided

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

Background and Evidence

The parties agree on the following facts. This periodic tenancy began in 2017 and ended on March 31, 2019. The tenant paid a security deposit of \$500.00 at the start of the tenancy.

The parties participated in a move-out inspection on March 31, 2019, the tenant disagreed with the landlord's assessment of the condition of the suite and refused to sign the condition inspection report. The landlord said that the tenant did not provide sufficient notice to end the tenancy and they incurred some loss of rental income for April, 2019, pro-rated for the amount of \$138.67. The landlord also says the rental suite required cleaning in the amount of \$294.67 and replacement of lightbulbs costing \$8.00.

The tenant testified that they agree with a deduction of \$8.00 from the deposit for the cost of replacing light bulbs. The tenant said they disagree with the other items claimed by the landlord on the move-out inspection. The tenant did not provide the landlord written authorization that they may retain amounts from the security deposit.

The tenant provided a forwarding address by a letter dated May 4, 2019. The landlord issued a cheque returning \$58.73 of the deposit for this tenancy to the tenant on that date. The landlord retains \$441.27 of the deposit.

Analysis

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.

The parties agree that the tenant has authorized the landlord to retain \$8.00 from the deposit for this tenancy. The landlord has returned the amount of \$58.73 to the tenant. The balance of \$433.27 has not been settled.

I accept the undisputed evidence that the tenant provided written notice of the forwarding address on May 4, 2019. I accept the evidence of the parties that the landlord failed to return the full security deposit to the tenant within 15 days of May 4, 2019, 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.

If the parties could not agree on the amount of deductions from the deposit, the landlord must apply for dispute resolution for an order authorizing the retention of the deposit. Even if there was a legitimate arrear the landlord must receive written authorization from the tenant or an order from the Branch pursuant to the *Act* to apply the security deposit. The landlord cannot decide to simply keep the deposits as recourse for their loss without following the legislative steps.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days from receiving the forwarding address. I accept the parties' evidence that the tenant has 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 tenants are entitled to an \$866.54 Monetary Order, double the value of the \$433.27 security deposit withheld by the landlord without authorization. No interest is payable over this period.

Conclusion

I issue a monetary award in the tenant's favour in the amount of \$866.54.

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders 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 30, 2019

Residential Tenancy Branch