



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “*Act*”) for the return of the security deposit and for the recovery of the filing fee paid for the Application for Dispute Resolution.

An agent for the Tenant (the “Tenant”) and the Landlord were both present for the duration of the teleconference hearing. The Landlord stated that she did not receive the Notice of Dispute Resolution Proceeding package or a copy of the Tenant’s evidence. The Landlord stated that she was aware of the hearing through a reminder email from the Residential Tenancy Branch.

The Tenant confirmed that the documents were sent to the Landlord by registered mail. She submitted a copy of the envelope with the registered mail tracking number which is also included on the front page of this decision.

Entering the tracking number on the Canada Post website confirms that the package was sent on May 18, 2019 and delivery attempted on May 21, 2019. It is noted on the website that the item was refused by the recipient and was returned to the sender.

The address on the package was read out loud and the Landlord confirmed that this is the correct address. Although the Landlord denied refusing any mail, I find this to be the evidence before me from the returned package and Canada Post note of the recipient refusing the package.

As such, I find that the Tenant served the Landlord in accordance with Sections 88 and 89 of the *Act* and I accept the evidence before me that shows that the mail was refused.

As stated in Section 90 of the *Act*, documents sent by registered mail are deemed received 5 days after sending. Therefore, I find that the Landlord was served as required and the hearing continued. I also note that failure to claim mail or refusal to accept mail is not a ground for review under the *Act*.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have considered all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the testimony and evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Is the Tenant entitled to the return of the security deposit?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Tenant stated that the tenancy was with her spouse and the Landlord which started February 15, 2019 and ended on March 17, 2019 through a mutual agreement. A copy of the mutual agreement to end the tenancy was submitted into evidence and was signed by both parties on March 19, 2019. The Tenant (as agent for her spouse) stated that her spouse was injured and in the hospital, which is why she stepped in to deal with the ending of the tenancy. She also noted that she is power of attorney for her spouse and signed the mutual agreement as power of attorney.

The Tenant stated that when she was ending the tenancy due to the medical issues of her spouse, she was unaware of the tenancy details but asked the Landlord for a copy of the tenancy agreement to confirm. She submitted a copy of the tenancy agreement into evidence. The tenancy agreement states that rent of \$1,795.00 was due on the 15th day of each month and that a security deposit of one month rent was due at the start of the tenancy. The initial term of the lease was for a period of three months, set to end on May 15, 2019. The Tenant noted that the deposit amount of \$1,795.00 was due to having a dog in the rental unit as well.

The Landlord agreed that the tenancy started on February 15, 2019 and was for a fixed term of three months. She stated that she was coerced into signing a mutual agreement to end the tenancy with the Tenant's spouse, despite the spouse not being on the tenancy agreement and the spouse's refusal to send the Landlord proof that the actual Tenant was in the hospital and unable to communicate with her directly.

The Landlord also agreed that monthly rent was \$1,795.00 and that a deposit of \$1,795.00 was paid. Regarding the deposit, the tenancy agreement states the following:

Damage deposit of one (1) months rent due upon signing.

The Landlord stated that the deposit of \$1,795.00 was for the security deposit and content deposit due to the rental unit being furnished. However, she stated that later the Tenant brought a dog to the rental unit and the Landlord did not require a pet damage deposit at this time since \$1,795.00 had already been paid.

The Tenant stated that they have not yet received any amount of the deposit back and that they did not agree to any deductions from the deposit. She also noted that she did not force the Landlord to sign a mutual agreement to end the tenancy.

The Landlord provided testimony regarding what occurred at the end of the tenancy and noted that the unit required over 2.5 hours of cleaning and that an agent for the Tenant had initially refused to give her the key back. She also stated that as the Tenant broke the fixed term agreement, she was short on rent for the remaining months of the fixed term. She stated that she was unable to rent the unit for another 6-7 weeks. The Landlord stated that she was unsure of the exact date the tenancy ended. The Landlord confirmed that she did not file a claim against the security deposit and stated that she never received the Tenant's forwarding address.

The Tenant stated that the forwarding address was provided in a letter dated April 18, 2019 which is the date that it was delivered in person to the Landlord's residence and left in the mailbox. The Landlord stated that she is not at home often and did not receive anything. The Tenant submitted a copy of a letter dated April 18, 2019 in which the Tenant's forwarding address is provided and the return of the security deposit is requested. In the letter, it is further noted that if the deposit is not returned within 15 days then the Tenant will file an application with the Residential Tenancy Branch. The Tenant also provided a photo of the envelope addressed to the Landlord's address.

The Landlord stated that she was not able to conduct a move-out inspection with the Tenant as the Tenant's spouse never offered to meet her even though the Landlord told her she would be there. She also noted her confusion with the situation given that her agreement was with the Tenant only and she did not hear from the Tenant directly during the ending of the tenancy.

The Landlord stated that she just wanted to get rid of the Tenant's spouse so "released her" of the last month's obligation through the mutual agreement. The Landlord also stated that she did not plan to claim against the Tenant for the unpaid rent as the Tenant would have wanted her to pay the rent with the security deposit which she retained for this purpose.

Analysis

The Tenant has applied for the return of the security deposit in the amount of \$1,795.00. As stated in Section 19 of the *Act*, a landlord must not require a security deposit or pet damage deposit equal to more than half a month's rent. Although the tenancy agreement states that the deposit required is a full month's rent, based on the testimony of both parties I find that this may have been paid as the security deposit and pet damage deposit. However, regardless of what it was paid for, as the parties agreed that \$1,795.00 was paid as the security deposit and/or pet damage deposit which was confirmed by the tenancy agreement, I find that this is the amount in dispute.

As stated in Section 38(1) of the *Act*, a landlord has 15 days from the later of the date the tenancy ends or the date the forwarding address was provided in writing to return the deposit or file a claim against it.

While the Landlord stated that she was unsure of the exact date the tenancy ended, I accept the evidence before me of the mutual agreement which confirms that the tenancy ended on March 17, 2019. Despite claims of pressure to sign the document, I find that both parties signed the mutual agreement and note that the Landlord also stated her intent to "release" the Tenant from the tenancy agreement. As stated in Section 44(1)(c) of the *Act*, a tenancy may end if the parties agree in writing. Therefore, I accept that the tenancy ended on March 17, 2019.

The Landlord stated that she did not receive a forwarding address from the Tenant and noted that she is not often home. However, I accept the testimony of the Tenant as well

as the evidence before me that shows that a letter was addressed to the Landlord on April 18, 2019 with the Tenant's forwarding address.

Therefore, I find it likely that this letter was delivered to the Landlord's residence and accept the Tenant's testimony that it was delivered on April 18, 2019 as stated. I also note that based on the Landlord's testimony, it does not seem that she was waiting for the Tenant's forwarding address to return the deposit, but instead that she felt she had a right to keep the deposit due to a claim of unpaid rent. During the hearing the Landlord did not indicate that she was waiting for the forwarding address to return the deposit and instead, stated that the deposit was kept for unpaid rent. I find this to further support my finding that the Landlord or someone at the Landlord's residence likely received the Tenant's forwarding address following delivery on April 18, 2019.

I also note that the Landlord argued that the notice of hearing documents were not received and that she is rarely home, despite Canada Post noting that the package was refused. I find this to be similar to the Landlord's denial that the forwarding address letter was received deposit the Tenant's testimony that it was delivered and a photo of the letter/envelope. Therefore, I find the Tenant's testimony regarding the forwarding address letter to be more credible and as such I accept that it was delivered as stated by the Tenant.

In accordance with Section 38(1) of the *Act*, I find that the Landlord had 15 days from April 18, 2019 to return the deposit or file a claim against it. Both parties agreed that the deposit had not yet been returned and that the Landlord did not file for dispute resolution against the deposit.

Despite the Landlord's testimony regarding why the security deposit was kept and not returned, I do not find that the Landlord had the right to keep the deposit in accordance with Section 38 of the *Act*, such as through a previous Order from the Residential Tenancy Branch or the written permission of the Tenant. Therefore, I find that the Landlord was not in compliance with Section 38(1) of the *Act*.

Section 38(6) of the *Act* states the following:

- (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, I find that the Landlord must pay the Tenant double the amount of the security deposit. Although the Tenant applied for the return of \$1,785.00, in accordance with the policy guidelines, a party is awarded double if they are entitled to it unless they have specifically waived their right to the doubling provision.

As the Tenant was successful with the application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Tenant is granted a Monetary Order in the amount outlined below:

Return of security deposit	\$1,795.00
Amount to double security deposit	\$1,795.00
Recovery of filing fee	\$100.00
Total owing to Tenant	\$3,690.00

Conclusion

Pursuant to Sections 38, 67 and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$3,690.00** as outlined above. The Tenant is provided with this 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: August 28, 2019

Residential Tenancy Branch