



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.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

\$325 -

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit pursuant to section 38:

Is the tenant entitled to a monetary order for compensation for failing to timely return the security deposit pursuant to section 38 and section 67?

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

Background and Evidence

The tenancy started in February 2016. The monthly rent was \$650.00. The tenancy ended on November 28, 2018.

The tenant states that he paid a \$330.00 security deposit. The tenant presented a receipt for \$330.00 dated February 23, 2016.

The landlord claimed that the tenant paid \$325.00 for the security deposit. The landlord acknowledged that the tenant delivered \$330.00. However, the landlord argued that the security deposit was only \$325.00 and the landlord only collected \$330.00 because the landlord did not have change. The landlord testified that they told the tenant to take \$5.00 off the first rent payment which the landlord says the tenant did. The tenant denied this arrangement and he testified that the security deposit was \$330.00 as stated on the receipt.

The tenant sent his forwarding address to the landlord by email on December 11, 2018. The landlord responded by email the same day and she stated that email delivery of his forwarding address was not adequate. In addition, she stated that she would return the security deposit when the tenant sent his forwarding address in writing by registered mail.

The tenant later had someone print out the email with the forwarding address and then hand deliver the printout to the landlord on May 3, 2019. The landlord acknowledged receiving the printout but the landlord claimed that this was still not adequate delivery of the tenant's forwarding address.

The landlord sent the tenant a cheque in the amount of \$325.00 on June 23, 2019 for the return of the security deposit. The tenant received the cheque but he did not deposit it because of this pending dispute.

The landlord claims that the tenant owes her unpaid rent and monetary compensation for damage to the rental unit.

Analysis

The parties disagree as to whether the security deposit was \$325.00 or \$330.00. The Act defines a security deposit as:

...money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property.

In this matter, both parties agree that \$330.00 was delivered to the landlord and a receipt was issued for the amount of \$330.00. I find that, on the balance of probabilities, the amount of \$330.00 was tendered to the landlord and this amount was provided as security for the tenancy. I find that the landlord has not provided sufficient evidence to establish that a portion of this payment was intended to be used for rent rather than the security deposit. For the foregoing reasons, I find that the landlord holds a security deposit in the amount of \$330.00.

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:
 - (b) 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 November 28, 2018 when the tenant moved out of the rental unit.

On the basis of the testimony of the tenant and the emails exchanged between the parties, I find that the tenant provided the landlord with his forwarding address by email on December 11, 2018. However, the landlord argues that delivery of the forwarding address by email is not sufficient.

In determining that the landlord received the tenant's forwarding address, in writing, I was guided, in part, by the definition provided by the Black's Law Dictionary Sixth Edition, which defines "writing" as "handwriting, typewriting, printing, photostating, and every other means of recording any tangible thing in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof". I find that an email message meets the definition of written as defined by Black's Law Dictionary.

Section 6 of the *Electronics Transactions Act* stipulates that a requirement under law that a person provide information or a record in writing to another person is satisfied if the person provides the information or record in electronic form and the information or record is accessible by the other person in a manner usable for subsequent reference, and capable of being retained by the other person in a manner usable for subsequent reference. As email messages are capable of being retained and used for further reference, I find that an email message can be used by a tenant to provide a landlord with a forwarding address pursuant to section 6 of the *Electronics Transactions Act*.

Section 88 of the *Act* specifies a variety of ways that documents, other than documents referred to in section 89 of the *Act*, must be served. Service by email is not one of methods of serving documents included in section 88 of the *Act*.

However, Section 71(2)(c) of the *Act* authorizes me to conclude that a document not given or served in accordance with section 88 or 89 of the *Act* is sufficiently given or served for purposes of this *Act*. As the landlord has responded to the email in which the tenants provided their forwarding address, I find that the landlord has been sufficiently served with the tenants' forwarding address. As such, I find that landlord received the forwarding address on December 11, 2018.

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 provided his forwarding address on December 11, 2019, the landlord's deadline to repay the deposit or file an application for dispute resolution was December 27, 2018.

I find that the landlord did not perform either of these requirements by the December 27, 2018. Accordingly, I find that the landlord is in violation of section 38(1) of the *Act*.

Although the landlord has claimed that the tenant owes unpaid rent to the landlord and that the property was damaged by the tenant, this is not relevant to the tenant's claim herein for return of their deposit because the landlord did not file an application for dispute resolution regarding unpaid rent or a claim for damage before the deadline December 27, 2018. Accordingly, I find that the landlord is in violation of section 38(1) of the *Act*. However, the landlord is still at liberty to file an application for dispute resolution regarding any claims for unpaid rent or for damages to the rental unit.

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 tenants is accordingly \$760.00 as set forth below:

Item	Amount
Recovery of double the security deposit (\$330.00 times 2)	\$660.00
Filing recovered by tenant	\$100.00
Total award to tenant	\$760.00

Accordingly, I order the landlord to pay the tenant the sum of \$760.00.

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 **\$760.00**. 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: October 16, 2019

Residential Tenancy Branch