



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- the return of the security deposit pursuant to section 38 of the *Act*; and
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67 of the *Act*.

The tenant and her advocate attended at the date and time set for the hearing of this matter. The landlord did not attend this hearing, although I left the teleconference hearing connection open until 2:02 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant, the tenant's advocate and I were the only ones who had called into this teleconference.

As the landlord failed to attend the hearing, I asked the tenant to confirm that the landlord had been served with the Notice of Dispute Resolution Proceeding and the tenant's evidence for this hearing. The tenant testified that the landlord was served with the notice of this hearing and the tenant's evidence by Canada Post registered mail on July 15, 2019, sent to the landlord's home address, which was the main level of the dispute address. The tenant submitted a Canada Post registered mail tracking number into documentary evidence as proof of service. I have noted the registered mail tracking number on the cover sheet of this Decision.

Section 90 of the *Act* sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a

document is considered or 'deemed' received on the fifth day after mailing if it is served by mail (ordinary or registered mail).

Residential Policy Guideline 12. Service Provisions provides guidance on determining deemed receipt, as follows:

Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

Therefore, I find that the landlord was served with the notice of this hearing and the tenant's evidence on July 20, 2019, the fifth day after mailing, in accordance with sections 89 and 90 of the *Act*.

Preliminary Issue – Amendment of Tenant's Application

The tenant's legal name was not correctly provided on the tenant's Application as it was missing her last name. Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the tenant's application to add her last name to her Application.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit, and if so, is the tenant entitled to a monetary award for compensation for the landlord's failure to address the security deposit in accordance with the *Act*?

Is the tenant entitled to a monetary award for compensation as a result of the landlord's failure to comply with the *Act*, regulations or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The tenant testified that there was no written tenancy agreement between the parties, only a verbal tenancy agreement. The tenant provided the following unchallenged information about the tenancy:

- The tenancy began February 1, 2018.

- Monthly rent at the end of the tenancy was \$1,100.00, payable on the 1st of the month.
- The tenant paid a security deposit of \$500.00 at the beginning of the tenancy, which continues to be held by the landlord.
- The landlord did not provide the tenant with a written condition inspection report at the beginning or end of the tenancy.

The tenant provided the following unchallenged testimony:

- The tenant was personally served with a Two Month Notice to End Tenancy for Landlord's Use on August 2, 2018, and submitted a copy of the first page of the notice into documentary evidence.
- The tenant moved out of the rental unit on August 19, 2018.
- The tenant provided her forwarding address in writing to the landlord by Canada Post registered mail on October 26, 2018 and submitted the registered mail tracking number (noted on the cover sheet of this Decision) into documentary evidence as proof of service. As such, the landlord was deemed to have received the tenant's forwarding address on October 31, 2018, the fifth day after mailing in accordance with the deeming provisions of section 90 of the *Act*.
- The tenant did not receive her security deposit. The tenant did not agree to allow the landlord to keep any portion of the security deposit, nor did the tenant receive any notice of the landlord filing an Application for Dispute Resolution to keep the security deposit.
- On the day the tenant was moving out, the landlord stated to her that she was not going to use the rental unit for her personal use as claimed on the Two Month Notice. The tenant testified that after she moved out, she returned to the rental unit and saw a "For Rent" signed post on the rental property. The tenant submitted a photograph of the sign into documentary evidence.

Analysis

The tenant's dispute consists of two heads of claim, which are addressed separately below.

1) Return of Security of Deposit

The *Act* contains comprehensive provisions on dealing with security and pet damage deposits. Under section 38 of the *Act*, the landlord is required to handle the security and pet damage deposits as follows:

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.

...

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

...

(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.

At no time does the landlord have the ability to simply keep all or a portion of the security deposit because they feel they are entitled to it due to damages caused by the tenant. If the landlord and the tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

In this matter, the tenancy ended on August 19, 2018, however, the landlord was not deemed to have received the tenant's forwarding address until October 31, 2018.

Therefore, the landlord had 15 days from October 31, 2018, which is the later date, to address the security deposit in accordance with the *Act*.

The tenant confirmed that she had not been served with any application for dispute by the landlord to retain the security deposit nor had she provided the landlord with any authorization, in writing, for the landlord to retain any portion of the security deposit.

I further note that the landlord extinguished the right to claim against the security deposit by failing to provide the tenant with a written copy of the condition inspection report of the rental unit at both the beginning and end of the tenancy. This extinguishment is explained in sections 24(2) and 36(2) of the *Act*, as follows:

- 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
 - (a) does not comply with section 23 (3) [*2 opportunities for inspection*]
 - (b) having complied with section 23 (3), does not participate on either occasion, or
 - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

- 36 (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
 - (a) does not comply with section 35 (2) [*2 opportunities for inspection*],
 - (b) having complied with section 35 (2), does not participate on either occasion, or
 - (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The landlord may only keep all or a portion of the security and pet damage deposit through the authority of the *Act*, such as an order from an Arbitrator, or with the written agreement of the tenant. In this matter, I find that the landlord did not have any authority under the *Act* to keep any portion of the security deposit.

Based on the above legislative provisions and the unchallenged evidence of the tenant, on a balance of probabilities, I find that the landlord failed to address the security deposit in compliance with the *Act*.

As such, in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a monetary award of \$1,000.00, which is equivalent to double the value of the security deposit paid by the tenant at the beginning of the tenancy. No interest is payable for this period.

2) Compensation of 12 Months of Rent Payable Per Section 51(2) of the *Act*

The tenant is seeking compensation under section 51(2) of the *Act*, which states as follows, in part:

- 51(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if
- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
 - (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The only supporting documentary evidence submitted by the tenant was a photograph of a "For Rent" sign, with the landlord's telephone number. I note that the photograph is exclusively focused on the sign, without any background included in the photograph, such as the house or property upon which the sign is located, which would provide confirmation of the location of the sign. Further, the tenant did not confirm whether or not the rental unit was actually rented out by the landlord to another renter. The tenant only testified that a "For Rent" sign was placed on the property by the landlord and that the landlord had stated to her she was not going to use the rental unit for her personal use.

Based on the testimony and evidence presented, on a balance of probabilities, I find that the tenant has failed to submit sufficient evidence to support her claim that the landlord failed to use the rental unit for the purposes provided on the Two Month Notice to End Tenancy, as the tenant was unable to provide any testimony or evidence to confirm that the rental unit was actually occupied by residents other than the landlord's close family. In this case, the rental property consisted of a main level unit occupied by the landlord and the basement level contained the rental unit. As such, without any

context to confirm that the “For Rent” sign pertained to the basement level rental unit, or confirmation that the landlord allowed occupants to reside in the rental unit other than close family, the tenant has failed to meet the burden of proving her claim that the rental unit was not used for the purposes stated on the Two Month Notice, and therefore the tenant’s claim for compensation pursuant to section 51(2) of the *Act* is dismissed.

In summary, I grant a Monetary Order in the tenant’s favour in the amount of \$1,000.00 in full satisfaction of the monetary award for compensation pursuant to section 38 of the *Act*.

Conclusion

I grant a Monetary Order in favour of the tenant in the amount of \$1,000.00.

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: October 22, 2019

Residential Tenancy Branch