



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TEAM 3000 PROPERTY MANAGEMENT LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FFT

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
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

The tenant 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 2:04 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 and I were the only ones who had called into this teleconference.

As only the tenant attended the hearing, I asked the tenant to confirm that he had served the landlord with the Notice of Dispute Resolution Proceeding for this hearing. The tenant testified that he served the landlords with the notice of this hearing and his evidence by Canada Post registered mail on August 12, 2019 and submitted into evidence a Canada Post registered mail tracking number as proof of service, which I have noted 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 August 17, 2019, the fifth day after mailing, in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit? And if so, is the tenant entitled to statutory compensation equivalent to the value of the security deposit pursuant to section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application?

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.

A written tenancy agreement was submitted into evidence. The tenant provided the following unchallenged testimony pertaining to this tenancy:

- This tenancy began April 1, 2019.
- Monthly rent of \$2,100.00 was payable on the first of the month.
- The tenant paid a \$1,100.00 security deposit at the beginning of the tenancy. Although the written tenancy agreement submitted into evidence indicated that only \$1,050.00 was required for the security deposit, the tenant was over-charged the required amount of the security deposit by the landlord in contravention of the *Act*. In support of his testimony pertaining to the amount of the security deposit paid, the tenant submitted an e-transfer receipt for payment

of the \$1,100.00 security deposit to the landlord and text messages between the tenant and landlord regarding payment of the \$1,100.00 security deposit.

- The tenant testified that he participated in a condition inspection walk-through of the rental unit with the landlord at the beginning and end of the tenancy, however the landlord never provided the tenant with a written condition inspection report at move-in or move-out, in contravention of the *Act*.
- The tenant moved out and ended the tenancy on May 30, 2019.

The tenant testified that on July 2, 2019 he provided the landlord with his forwarding address in writing, by Canada Post registered mail, and provided the registered mail tracking number (recorded on the cover sheet of this Decision) as part of his testimony during hearing.

The tenant testified that on August 1, 2019, he received an e-transfer from the landlord of \$1,100.00.

The tenant testified that he never agreed in writing to allow the landlords to deduct all or a portion of the security deposit.

As the landlord has now returned the security deposit to the tenant, the tenant's application has been amended to request only the statutory compensation equivalent to the amount of the security deposit due to the landlord's failure to address the security deposit in accordance with the *Act*, and the recovery of the filing fee.

Analysis

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

Further, I note that in this matter, based on the tenant's unchallenged testimony, the landlord extinguished his right to claim against the security deposit for damage to the rental unit by failing to provide a written condition inspection report to the tenant at the start of the tenancy. This extinguishment is explained in section 24(2) 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.

Therefore, the landlord had no right to make a claim against the security deposit for damage to the rental unit and was required to return the deposit to the tenant within 15 days of the end of the tenancy, and once the landlord received the tenant's forwarding address in writing.

In this matter, the tenancy ended on May 30, 2019. The tenant testified that he mailed the landlord his forwarding address in writing on July 2, 2019. In accordance with the deeming provisions of section 90 of the *Act*, I find that the landlord was in receipt of the tenant's forwarding address on the fifth day after mailing, July 7, 2019.

Therefore, the landlord had 15 days from July 7, 2019, to address the security deposit in accordance with the *Act*. In this case, the landlord sent an e-transfer to the tenant to return the security deposit on August 1, 2019, which is beyond the 15 days allowed under the *Act*.

The tenant confirmed that he did not provide the landlord with any authorization, in writing, for the landlord to retain any portion of the security deposit.

The landlord may only keep all or a portion of the security 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 testimony and evidence before me, 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 \$1,100.00, which is equivalent to the value of the security deposit paid by the tenant at the beginning of the tenancy, with any interest calculated on the original amount only. No interest is payable for this period.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord.

In summary, I order that the landlord pay the tenant the sum of **\$1,200.00** in full satisfaction of compensation to the tenant for failing to comply with section 38 of the *Act*, and recovery of the filing fee paid by the tenant for this application.

Conclusion

I grant a Monetary Order in favour of the tenant in the amount of \$1,200.00.

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: November 21, 2019

Residential Tenancy Branch