



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This is an application by the tenant(s) filed under the Residential Tenancy Act (the “Act”) for a monetary order for return of rent, and the security deposit and the filing fee for the claim.

The tenant) attended the hearing. As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant testified the Application for Dispute Resolution and Notice of Hearing were served in person on July 28, 2019, at 12:47 pm. The tenant stated that they landlord would not take the document in their hand and they were told by the landlord to place the documents in their mailbox.

In this case, the landlord would not accept the documents from the tenant when presented. The landlord cannot refuse service when given in a manner under the Act. The landlord told the tenant to put the documents in their mailbox. I find that the landlord has been duly served in accordance with the Act.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the tenant entitled to a monetary order of rent and the security deposit?

Background and Evidence

The parties entered into a tenancy agreement on August 26, 2018. The tenancy was to begin on September 1, 2018. Rent in the amount of \$1,200.00 was paid in advance of the tenancy commencing. A security deposit of \$1,000.00 was paid by the tenant. Filed in evidence is a copy of the tenancy agreement. Filed in evidence are receipts of proof of payment.

The tenant testified that the landlord was required by their tenancy agreement to have work completed prior to them moving into the premise. The tenant stated the landlord did not fulfill their obligations and the rental unit was not ready to move in on September 1, 2019 and they had to find alternative living accommodations.

The tenant testified that they paid the landlord rent for September 2018 when they entered into the agreement. The tenant stated they were unable to move into the premise and they should be entitled to the return of rent in the amount of \$2,100.00.

The agreement states the following,

“This letter is to verify that the Landlord and Tenant are both agreeing to the following conditions prior to the move in of the tenant named ... on September 1st of 2018. When conditions are not being served or failed to the date agreed, the landlord ... will comply to the following conditions: 1) landlord will refund the full security deposit; 2) No rent fee(s) to be required from the tenant ...”

The tenant testified that they gave the landlord their forwarding address on September 12, 2018 by registered mail. The tenant stated that the landlord failed to pickup the letter and it was returned unclaimed. The tenant stated the landlord is avoiding service.

The tenant testified that on October 8, 2018, they attended the landlord's premises and dropped of their forwarding address in the mailbox. The tenant stated that landlord has not returned their security deposit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenant has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

I accept the evidence of the tenant that the landlord failed to comply with the agreement to ensure the rental unit was ready for September 1, 2018. The landlord had received the rent for September 2018, in advance, and failed to return the rent when they failed to meet their obligations under the agreement. I find the landlord was not entitled to keep the rent for September 2018. Therefore, I find the tenant is entitled to the return of September 2018, rent in the amount of **\$2,100.00**.

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

Return of security deposit and pet damage deposit

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.

- (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.

In this case, I find the landlord was deemed served with the tenant's forwarding address on September 17, 2018, which was sent by registered mail on September 12, 2018. Refusal or neglect to pick up the package does not override the deemed served provision of the Act.

Further, the tenant then dropped off the returned package by placing it in the landlord's mailbox on October 8, 2018. I find the landlord was deemed served on October 11, 2018.

I accept the tenant's evidence that the landlord did not return the security deposit or make an application claiming against the security deposit within 15 days of receipt of the forwarding address and remains unpaid.

I find the landlord has breached 38(1) of the Act.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

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. Here the landlord did not have any authority under the Act to keep any portion of the security deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pay the tenant the sum of **\$2,000.00**, comprised of double the security deposit (\$1,000.00) on the original amount.

I find that the tenant has established a total monetary claim of **\$4,200.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

The tenant is given a formal monetary order pursuant to 67 of the Act, in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court.

The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application for return of rent and the security deposit is granted. The tenant is granted a monetary order in the above noted amount.

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 05, 2019

Residential Tenancy Branch