



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that the landlord was served with his application for dispute resolution via registered mail on August 13, 2019. A Canada Post receipt confirming the registered mailing was entered into evidence. The landlord testified that he received the tenant's application for dispute resolution but could not recall on what date. I find that the landlord was deemed served with the tenant's application for dispute resolution on August 18, 2019, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

Preliminary Issue- Amendment

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [*director's powers and duties*], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Both parties agreed that the address of the subject rental property in the tenant's application for dispute resolution is incorrect. Pursuant to section 64 of the *Act*, I amend the tenant's application to state the correct address of the subject rental property.

Issue to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began two to three years ago and ended on July 1, 2019. Monthly rent in the amount of \$700.00 was payable on the first day of each month. A security deposit of \$350.00 was paid by the tenant to the landlord.

The tenant testified that he texted the landlord with his forwarding address on July 12, 2019. The text message was entered into evidence. The landlord testified that he received the tenant's forwarding address via text on July 12, 2019.

The tenant testified that he sent the landlord his forwarding address in writing via registered mail on July 31, 2019. A Canada Post registered mail receipt for same was entered into evidence. The landlord testified that he did not receive the tenant's forwarding address in writing.

Both parties agree that the landlord sent the tenant an e-transfer in the amount of \$350.00 on August 11, 2019. Both parties agree that the tenant did not accept or deposit the e-transfer. The tenant testified that he did not accept the e-transfer because he already filed for dispute resolution and did not want the status of his claim to be affected. The tenant testified that he did not authorize the landlord to retain any portion of his security deposit.

The landlord testified that he and the tenant were previously on good terms and thought that the tenant would stop by to collect the security deposit. The landlord testified that he didn't know there was a rush to return the deposit and believed that "we'd get to it when we get to it".

Analysis

Section 38 of the Act requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit.

However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the testimony of both parties and the evidence provided. The tenancy ended on July 1, 2019. The tenant provided the landlord with his forwarding address via text message on July 12, 2019. While text messages do not conform with the service requirements set out in section 88 of the *Act*, I find the tenant's forwarding address was sufficiently served on the landlord pursuant to section 71(2) of the *Act* because the landlord confirmed receipt of the tenant's forwarding address via text on July 12, 2019. The landlord did not attempt to return the security deposit or make an application for dispute resolution to claim against it, within 15 days of July 12, 2019. I find that the tenant did not authorize the landlord to retain any portion of his security deposit.

Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit. In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to receive \$700.00, which is double the security deposit.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$700.00.

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 26, 2019

Residential Tenancy Branch