



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSD, FFT**

Introduction

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

- an monetary order for the return of two times the security and pet damage deposits (the "**Deposits**") of \$2,861.43 pursuant to sections 38 and 62; and
- authorization to recover the filing fee of \$100 for this application from the landlord pursuant to section 72.

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 was assisted by a translator.

Preliminary Issue – Service of Documents

The tenant testified that the landlord was served the notice of dispute resolution form and supporting evidence package (the "**Tenant's Documents**") via registered mail on August 21, 2019. The tenant provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. The landlord testified that he did not receive the Tenant's Documents, and that he was only made aware of this hearing by an automated email sent to him by the Residential Tenancy Branch shortly before the hearing, which attached the notice of dispute resolution package, but not the tenant's documentary evidence.

The Canada Post Tracker shows that a notice card was left at the landlord's mailing address with instructions on how to retrieve the Tenant's Documents on August 22, 2019 and that the Tenant's Documents were returned to the tenant by Canada Post on September 16, 2019, as the landlord had not collected them.

Section 89 of the Act states:

Special rules for certain documents

89(1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
[...]

(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

Section 88 does not require that the recipient receive the documents sent by registered mail for service to be effective. It only requires that the sender demonstrate that the documents were sent. I find that the tenant has done so. As such, I find that the landlord is deemed served with the Tenant's Documents on August 26, 2019, five days after the tenant mailed them, in accordance with sections 89 and 90 of the Act.

The landlord testified that he served the tenant with copies of his documentary evidence (the "**Landlord's Documents**") by text message and email. He testified that he sent the Landlord's Documents to the phone number and email address listed by the tenant on the notice of dispute resolution proceeding form (I note that this form contained the tenant's mailing address for service). The tenant testified that she did not receive them by text message, and that she does not often check her the email address she provided on the notice of dispute resolution proceeding form, so she does not know if the Landlord's Documents have been sent there. I note that, at the end of the hearing, the tenant confirmed that that I may send a copy of this written decision to the email address listed on the notice of dispute resolution proceeding form.

Section 88 of the Act sets out how documentary evidence may be served on an opposing party:

How to give or serve documents generally

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

(a) by leaving a copy with the person;
(b) if the person is a landlord, by leaving a copy with an agent of the landlord;

- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

Section 88 does not permit the service of documents by text message or by email. I find that the landlord did not serve the Landlord's Documents on the tenant in accordance with the Act. As such, I decline to admit the documentary evidence the landlord provided the Residential Tenancy Branch. The landlord was entitled to give oral testimony as to the contents of the excluded documents. He availed himself of this entitlement at the hearing.

Issue(s) to be Decided

Is the tenant entitled to:

- 1) the return of two times the amount of the security and pet damage deposits; and
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting February 26, 2019 and ending February 26, 2020. Monthly rent is \$1,875 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$1,000 and a pet damage deposit of \$500. The landlord still retains the Deposits.

The tenant vacated the rental unit on June 22, 2019. The landlord re-rented the rental unit by the end of July 2019.

On July 22, 2019, the tenant provided the landlord with her forwarding address in writing by way of a letter sent by registered mail. The landlord confirmed receipt of this letter. In the letter, the tenant sought the return of the Deposits, less \$150 for the replacement of a key fob (\$1,350 total), which both parties agreed the landlord was entitled to deduct from the Deposit.

The landlord did not return the balance of the Deposit to the tenant.

The landlord did not make an application at the Residential Tenancy Branch to keep the Deposit within 15 days of receiving the tenant's forwarding address, or at all.

The landlord testified that he did not make such an application because he was trying to work out a resolution with the tenant relating to her breaking the fixed term tenancy agreement, the damages he suffered as a result, and damage to rental unit and cleaning costs.

The tenant seeks a monetary order for \$2,941.43, representing the following:

| | |
|--|-------------------|
| Doubling of the Deposits | \$3,000.00 |
| Compensation for cost of registered mail | \$11.43 |
| Filing Fee | \$100.00 |
| Credit for Key Fob | -\$150.00 |
| Total | \$2,961.43 |

Analysis

Section 38(1) of the Act states:

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.

Based on the testimony of the parties, I find that the tenancy ended on June 22, 2019, and that the tenant sent her forwarding address in writing to the landlord by registered mail on July 22, 2019. Pursuant to section 90 of the Act, I deem the landlord served with the tenant's forwarding address on July 27, 2019, five days after it was mailed.

Per section 38(1), I find that the landlord was obligated to either repay the tenant the Deposits or make an application claiming against the Deposits by August 11, 2019 (15 days from July 27, 2019). The landlord did neither. I find that he has failed to comply with his obligations under this section.

In order for it to be permissible for the landlord to retain the Deposits past 15 days after the tenancy has ended and the tenant has provided her forwarding address, it is not enough for the landlord to:

- 1) allege he suffered damage caused the tenant
- 2) intends to make an application against the tenant at some point in the future;
- 3) attempt to negotiate a resolution of these issues.

He is required to actually file an application to keep the Deposits.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim the security deposit or pet damage deposit within the specified timeframe:

- (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.

The language of section 38(6)(b) is mandatory. As the landlord has failed to comply with 38(1), I order that he pay to the tenant double the amount of the Deposits.

I note that such an order does not prevent the landlord from making an application against the tenant to recover losses arising from her alleged breaches of the Act or tenancy agreement.

There is no basis in the Act that allows for a party to recover their mailing costs or other disbursements (except for the filing fee). As such, I decline to award any amount to the tenant in compensation for registered mail costs.

I find that the parties agreed that the landlord could retain \$150 of the deposit as compensation for the replacement of a key fob. Policy Guideline 17 discusses how set-offs impact the doubling of security deposits:

4. In determining the amount of the deposit that will be doubled, the following are excluded from the calculation:

- any arbitrator's monetary order outstanding at the end of the tenancy;
- any amount the tenant has agreed, in writing, the landlord may retain from the deposit for monies owing for other than damage to the rental unit¹⁸ (see example B below);
- if the landlord's right to deduct from the security deposit for damage to the rental unit has not been extinguished, any amount the tenant has agreed in writing the landlord may retain for such damage.

[...]

Example B: A tenant paid \$400 as a security deposit. During the tenancy, the parties agreed that the landlord use \$100 from the security deposit towards the payment of rent one month. The landlord did not return any amount. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount that remained after the reduction of the security deposit during the tenancy. In this example, the amount of the monetary order is \$600.00 ($\$400 - \$100 = \300; $\$300 \times 2 = \600).

As such, the deduction of the cost of the fob must be considered *before* the balance of the Deposits is doubled. Accordingly, the tenant is entitled to the return of \$2,700 ($\$1,500 - \$150 = \$1,350$; $\$1,350 \times 2 = \$2,700$) representing the return of double the balance of the Deposits. I order the landlord pay the tenant this amount.

Pursuant to section 72(1), as the tenant has been substantially successful in her application, I order that the landlord reimburse the tenant the filing fee (\$100).

Conclusion

Pursuant to sections 38, 62, and 72 of the Act, I order that the landlord pay the tenant \$2,800, representing:

| | |
|--|-------------------|
| Double the balance of the Deposits (\$1,350) | \$2,700.00 |
| Filing Fee | \$100.00 |
| Total | \$2,800.00 |

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: December 5, 2019

Residential Tenancy Branch