



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This is an application by the tenant filed under the Residential Tenancy Act (the “Act”) for a monetary order for return of the security deposit (the “Deposit”).

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary and Procedural matter

At the outset of the hearing the landlord stated they were not served with a copy of the tenant’s application or notice of hearing. The landlord stated they only found out about this matter as they received reminder notices sent to their email address from the Residential Tenancy Branch.

The tenant testified that they served the landlord by registered mail, which was sent on October 27, 2019. The tenant stated the package was returned marked “refused”. Filed in evidence is the Canada Post tracking number.

The landlord stated that their mother may have returned the package in error.

In this case, the landlord was served by registered mail, refusal to accept a package does not override the deem services provision under the Act. I find the landlord was served in accordance with the Act.

I

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.

Issue to be Decided

Is the tenant entitled to a monetary order for return of the Deposit?

Background and Evidence

The tenancy began December 2018. Rent in the amount of \$1,000.00 was payable on the first of each month. A security deposit of \$500.00 was paid by the tenant.

The tenant testified that they vacated the premises on September 29, 2019. The tenant stated that they provided the landlord with a written notice of the forwarding address on September 29, 2019.

The landlord testified that they received the tenant's forwarding address on September 29, 2019. The landlord stated that the tenant did not give notice to end the tenancy and left the rental unit a mess.

The landlord confirmed they have not returned the Deposit and have not made an application for dispute resolution claiming against the Deposit.

Analysis

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

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.

I accept the evidence of both parties that the landlord received the tenant's forwarding address on September 29, 2019. I find the landlord had until October 14, 2019, to make an application for dispute resolution claiming against the Deposit. The landlord did not make an application, nor did the landlord return the Deposit.

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 Deposit. Therefore, I find that the landlord was not entitled to retain any portion of the 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(s) the sum of \$1,000.00, comprised of double the security deposit (\$500.00) on the original amount held.

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.

Conclusion

The tenant's application for return of the 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: December 10, 2019

Residential Tenancy Branch