



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAPLE WOOD CONSTRUCTION (AKA: MAPLEWOOD CONSTRUCTION)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The tenant applied for monetary order for the return of their security deposit plus the recovery of the cost of the filing fee.

The tenant attended the teleconference hearing. The tenant gave affirmed testimony, was provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions during the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated November 21, 2019 (Notice of Hearing), the application and documentary evidence were considered. The tenant provided affirmed testimony that the Notice of Hearing, application and documentary evidence were served on the landlord by registered mail on November 22, 2019. The tenant provided a registered mail tracking number in evidence and confirmed that the name and address on the registered mail package matched the name of the landlord and the address provided by the landlord. For ease of reference, the registered mail tracking number has been included on the style of cause.

According to the Canada Post online registered mail tracking website, the landlord signed for and accepted the registered mail package on November 29, 2019. As a result, I find the landlord was served with the Notice of Hearing, application and documentary evidence on November 29, 2019.

As the landlord was served and did not attend the hearing, I consider this matter to be undisputed by the landlord and the hearing proceeded without the landlord present in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules).

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issues to be Decided

- Is the tenant entitled to the return of their security deposit under the Act?
- Is the tenant entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The tenant stated that although a written tenancy agreement existed between the parties, during their move they lost a copy of the written tenancy agreement. The tenant testified that they made an error on the application and instead of \$390.00, the tenant actually paid a security deposit of \$375.00 in either 2013 or 2014.

The tenant stated that they vacated the rental unit on October 15, 2019. The tenant testified that on September 15, 2019, the tenant provided written notice to the landlord that they would be vacating the rental unit on October 15, 2019. The tenant stated that the landlord did not object to the tenant vacating the rental unit. The tenant testified that they provided their written forwarding address on their one month written notice dated September 15, 2019, a photo of which was submitted in evidence. The tenant testified that they served their one month notice through the landlord's mail slot door in the rental unit building, which was the same mail slot used to pay the monthly rent. The tenant testified that 90% of their rent payments were made in cash through the same mail slot for the landlord in the rental building and that the tenant had been issued receipts for cash payments of rent during the tenancy, so the tenant knew the landlord regularly checked their mail delivered through the mail slot.

The tenant testified that the landlord has ignored many emails and to date has not returned any portion of their \$375.00 security deposit. The tenant confirmed that they are not waiving their right to double the return of the security deposit if they are so entitled under the Act. The tenant confirmed that they did not give any permission for the landlord to retain any portion of their security deposit. There was no evidence before me that the landlord has made an application to claim against the tenant's security deposit.

Analysis

Based on the above, and the undisputed documentary evidence and undisputed testimony of the tenant, and on a balance of probabilities, I find the following.

The tenant confirmed that they did not provide permission for the landlord to retain any portion of their \$375.00 security deposit. I am also satisfied that the tenant provided their written forwarding address through the mail slot of the landlord on September 15, 2019. Section 90 of the Act states that documents served in this method are deemed served three days after they are placed in a mail slot. Therefore, I find the landlord was deemed served pursuant to section 90 of the Act on September 18, 2019.

I accept the tenants undisputed testimony that the landlord has not returned any amount of their security deposit. As a result, section 38 of the Act applies and 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.

(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.

[Emphasis added]

Based on the above, I find the landlord has breached section 38 of the Act by failing to return or claim against the tenant's security deposit. In reaching this finding I have considered that there is no evidence before me that the landlord applied to return the tenant's security deposit or had written permission to retain any amount of the security deposit.

The security deposit is held in trust for the tenants 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, or the written agreement of the tenant. In the matter before me, I find the landlord did not have any authority under the Act to keep any portion of the security deposit and did not return the security deposit to the tenants within 15 days of September 18, 2019 as required by the Act.

Section 38(6) of the Act 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.

As a result, I find the tenant has met the burden of proof and I grant the tenant **\$750.00**, which is double their original \$375.00 security deposit, pursuant to section 67 of the Act. In addition, I grant the tenant **\$100.00** pursuant to section 72 of the Act, for the recovery of the cost of the filing fee. Given the above, I find the tenant has established a total monetary claim of **\$850.00**.

I caution the landlord not to breach section 38 of the Act in the future.

Conclusion

The tenant's application is fully successful.

The landlord has been cautioned not to breach section 38 of the Act in the future.

The tenant is granted a monetary order in the amount of \$850.00 as described above.

The monetary order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The decision will be emailed to the parties.

The monetary order will be emailed to the tenant only for service on the landlord.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 7, 2020

Residential Tenancy Branch