



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* ("Act") for:

- authorization to obtain a return of double the amount of the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 20 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that he served the landlord with the tenant's application for dispute resolution hearing package on November 28, 2019, by way of registered mail to the address provided by the landlord in the parties' written tenancy agreement. The tenant provided a Canada Post tracking number and confirmed it verbally during the hearing. The tenant also provided a photograph of the mail envelope with the landlord's name, mailing address, Canada Post date stamp, and tracking number. The Canada Post tracking website states that the mail was unclaimed.

In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's application on December 3, 2019, five days after its registered mailing to the address provided by the landlord in the tenancy agreement.

The landlord uploaded a letter, dated April 7, 2020, to the Residential Tenancy Branch ("RTB") website on April 10, 2020, with the file number for this application, stating that he was sent an evidence reminder by the RTB.

Issues to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

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

The tenant testified regarding the following facts. This tenancy began on January 1, 2019 and ended on March 30, 2019. Monthly rent in the amount of \$850.00 was payable on the first day of each month. A security deposit of \$425.00 was paid by the tenant and the landlord continues to retain this deposit in full. The tenant paid the landlord \$400.00 by PayPal on December 7, 2018 and \$25.00 by e-transfer in January 2019, along with a reimbursement by e-transfer in January 2019 for the PayPal fee charged to the landlord from the December 2018 payment. A written tenancy agreement was signed by the landlord but not the tenant. A copy of the tenancy agreement was provided for this hearing.

The tenant stated the following facts. Move-in and move-out condition inspection reports were not completed for this tenancy. The tenant provided a written forwarding address by way of a letter, dated March 20, 2019, and sent by registered mail to the landlord on the same date. The tenant provided a copy of this letter and the mail envelope with the landlord's name, address and Canada Post tracking number. The tenant did not receive an application for dispute resolution from the landlord to retain the tenant's security deposit. The landlord did not have permission to retain any amount from the tenant's security deposit.

The tenant seeks a return of double the amount of his security deposit of \$425.00, totalling \$850.00, plus the \$100.00 application filing fee.

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 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 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 tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

On a balance of probabilities, I make the following findings based on the testimony and written evidence of the tenant. The tenancy ended on March 30, 2019. The tenant provided a written forwarding address to the landlord by way of a letter sent by registered mail on March 20, 2019. I find that the landlord was deemed served with the letter on March 25, 2019, five days after its registered mailing, as per sections 88 and 90 of the *Act*, at the address provided by the landlord in the tenancy agreement.

I find that the tenant did not give the landlord written permission to retain any amount from his security deposit. The landlord did not return the full deposit or make an application for dispute resolution to claim against the deposit within 15 days of the end of tenancy date and the forwarding address date.

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 double the value of his security deposit of \$425.00, totaling \$850.00. There is no interest payable on the deposit during the period of this tenancy.

As the tenant was successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$950.00 against the landlord. 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: April 17, 2020

Residential Tenancy Branch