



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 order for the return of a security deposit or pet damage deposit pursuant to section 38; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord acknowledged receipt of the tenant's Application for Dispute Resolution Proceedings Package. The landlord testified that he has not received any evidence from the tenant. The tenant acknowledged receipt of the landlord's evidence and stated he has no issue with timely service of documents.

Preliminary Issue

The tenant testified that he sent his evidence to the landlord after receiving the landlord's evidence. I note that the tenant's evidence was not supplied to me 14 days prior to the hearing as required by Rule 3 of the Residential Tenancy Branch Rules of Procedure. As the landlord did not receive the tenant's evidence and because it was provided to me after the deadline to provide evidence, the tenant's documentary evidence was excluded.

Issue(s) to be Decided

Should the security deposit be returned to the tenant, doubled?
Is the tenant entitled to recover the filing fee?

Background and Evidence

A copy of the tenancy agreement was provided by the landlord. The tenancy began on July 15, 2018 with rent set at \$1,275.00 and 35% of the utilities payable on the first day of each month. A security deposit of \$650.00, which includes a pet deposit of \$200.00 was collected at the commencement of the tenancy by the landlord which he continues to hold.

The tenant provided the following testimony. A security deposit of \$650.00, which includes a pet deposit of \$200.00 was collected at the commencement of the tenancy by the landlord which he continues to hold. This testimony contradicts the original claim filed by the tenant which indicates the security deposit was \$637.50, however during the hearing, the tenant testified he made an error in the original application and it should read \$650.00.

A condition inspection report was done with the co-landlord of the rental unit at the commencement of the tenancy. On September 16, 2019, the tenant gave the landlord written notice to end the tenancy with an effective date of October 31, 2019. By phone on October 28th, the landlord asked the tenant to come to the house to give back the keys on October 30th at 8:00 p.m. When the tenant arrived, the landlord did not bring the original condition inspection report, saying he forgot to bring it and that it didn't matter. The tenant stood in the kitchen while the landlord looked around. During this time, the tenant asked the landlord when he would get his security deposit back and the landlord responded that he was unsure.

The tenant testified that he provided his forwarding address to the landlord in writing by sending it to the landlord via registered mail on November 2, 2019. The tracking number for the mailing is recorded on the cover page of this decision. The tenant testified it was sent to the address of the landlord provided on the tenancy agreement.

The landlord provided the following testimony. He had provided the date for condition inspection report to the tenant by text message, although this text message was not provided as evidence for this hearing. There was window damage done to the rental unit and he told the tenant on October 30th that he was going to use the security deposit to cover the damage. The landlord testified that he brought the original condition inspection report with him on October 30th and the tenant didn't sign it when it was presented to him. The landlord testified that the tenant just left without signing. To corroborate this, the landlord points to photographs he testified were taken after the tenancy ended. The landlord emailed the tenant within 2 weeks to tell him about the repairs done to the rental unit however he was served with the tenant's Application for Dispute Resolution.

During the hearing, the landlord testified that he only received the tenant's forwarding address in writing when he was served with the Application for Dispute Resolution by the tenant.

Analysis

The parties provided contradictory evidence as to whether the condition inspection report was brought on October 30th or if the tenant refused to sign it. Despite this, the parties agree that they both attended the rental unit on that day, had differing opinions about whether there was damage done to the unit, and that the return of the security deposit was discussed. Based on the agreed facts, I find that section 36 of the Act has

not been breached; the tenant has not extinguished his right to the security deposit and the landlord has not extinguished his right to claim against the security deposit for damage to the rental unit. The issue before me is whether the tenant has provided sufficient evidence to prove the landlord has not complied with section 38 of the *Act* (reprinted below).

The tenancy ended on October 31, 2019 and the tenant has provided corroborative evidence to show he served the landlord with his forwarding address on November 2, 2019 by registered mail.

Despite this, the landlord testified he didn't receive the tenant's forwarding address until he got it included in the tenant's Application for Dispute Resolution package. This contradicts the landlord's original testimony that he was not provided with **any** evidence from the tenant. I note that the tenant did not upload any documentary evidence to the Residential Tenancy Branch system until April 5, 2020. Included in the tenant's evidence, excluded from the hearing for not being served upon the landlord, was his proof that he provided his address to the landlord. No other proof of providing a forwarding address to the landlord was submitted by the tenant when he first filed his application.

Based on this, I draw an adverse inference to the landlord's claim that he did not receive the forwarding address until it was included with the tenant's Application for Dispute Resolution. Based on a balance of probabilities, I find it more likely than not the landlord has been in possession of the tenant's forwarding address prior to being served with the Application for Dispute Resolution. Pursuant to sections 88 and 90, I deem the forwarding address was served upon the landlord on November 7, 2019, five days after being sent to him by registered mail in accordance with sections 88 and 90 of the *Act*.

Section 38 of the *Act* addresses the return of security deposits.

- (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,**
 - c) the landlord must do one of the following:
 - d) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - e) 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 find that the landlord did not returned the security deposit to the tenant within 15 days after the tenancy ended and receiving the tenant's forwarding address. Accordingly, I find the landlord has failed to comply with his obligations under section 38(1) of the *Act*. The language of section 38(6)(b) is mandatory. As the landlord has failed to comply with section 38(1), I order that the landlord pay to the tenant double the original amount of the security deposit.

Rule 2.2 states the claim is limited to what is stated in the application, while Rule 4 allows an applicant to amend the application. The tenant did not amend his application to seek a doubling of the \$650.00 security deposit and in accordance with Rule 2.2, I award the tenant a doubling of the security deposit of \$637.50 as originally claimed, for a total of **\$1,275.00**.

As the tenant was successful in his claim, the \$100.00 filing fee will be recovered by the tenant.

Conclusion

I issue a monetary order in the tenant's favour in the amount of **\$1,375.00**.

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: April 16, 2020

Residential Tenancy Branch