



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was scheduled to hear a tenant's application for return of double the security deposit. The tenant appeared at the hearing along with a witness and the person who served the hearing documents upon the landlord. There was no appearance on part of the landlord despite leaving the teleconference call open for 30 minutes.

Since the landlord did not appear, I explored service of hearing documents upon the landlord.

The person referred to by initials PJ testified that she personally served the landlord with an envelope she received from the tenant in the lobby of the landlord's place of work in the afternoon in December 2019.

The tenant testified that the envelope she provided PJ contained the proceeding package and some evidence and she gave it to PJ to serve upon the landlord on December 6, 2019. The tenant testified that she also served additional evidence upon the landlord by posting to the landlord's door in January 2020.

I was also in receipt of a letter dated January 6, 2020 that appears to be written by the landlord and acknowledges the landlord was in receipt of the tenant's proceeding package as the landlord referenced the file number associated to this Application.

I was satisfied that the landlord was duly served with notification of this proceeding and I continued to hear from the tenant without the landlord present.

Issue(s) to be Decided

1. Is the tenant entitled to return of double the security deposit?
2. Award of the filing fee.

Background and Evidence

The tenant testified that on February 28, 2018 she paid \$950.00 to the landlord's business as a security deposit for sober living accommodation and she was required to pay rent of \$950.00 to the landlord's business, via etransfer, starting February 28, 2018. The tenant provided the written agreement for the sober living accommodation that she signed on February 16, 2018. The tenant described her sober living accommodation as being a room in the basement suite of the landlord's house and there were other residents sharing the basement suite with her while it was a sober living accommodation.

The tenant testified that the landlord ceased operating the sober living accommodation when the landlord gained employment in the same field in September 2018 and the parties entered into a residential tenancy agreement requiring the tenant to pay rent of \$850.00 for the sole occupancy of the basement suite located in the landlord's house. The tenant started paying the landlord, as an individual, via etransfer, in the amount of \$850.00 and the security deposit she had paid in February 2018 was transferred to her tenancy agreement. The tenant testified that the landlord did not prepare a new written agreement reflecting their residential tenancy agreement.

The tenant testified that on August 20, 2019 the landlord instructed the tenant, via text message, to move out of the rental unit, and the tenant complied with the landlord's instruction the same day.

The tenant requested the landlord return her security deposit via text message, but the landlord refused to return it.

The tenant posted a letter containing her forwarding address to the landlord's door on November 12, 2019.

The tenant testified that the landlord did not refund her deposit to her, the landlord did not file a claim against her deposit, and the tenant did not authorize the landlord to retain her deposit. However, the tenant received a registered letter from the landlord in January 2020 whereby the landlord was seeking to settle the matter with the tenant for

the amount of \$1050.00 which the tenant determined is the sum of her security deposit plus the filing fee she paid for this Application. The tenant was not agreeable to settling the matter for that amount and is pursuing her claim for return of double the security deposit.

The tenant had provided me a copy of the sober living accommodation agreement entered into on February 16, 2018 that includes a notation that the security deposit was \$950.00 payable on February 28, 2018. The tenant also provided a copy of the letter she gave to the landlord with her forwarding address.

I ordered the tenant to provide me with a copy of banking records showing she paid rent to the landlord, as an individual; the text message whereby the landlord instructed her to move out; and, the landlord's offer to settle. The tenant complied with my order and I have reviewed those documents in making this decision.

The tenant provided several banking records demonstrating she paid rent of \$950.00 to the landlord's business and then \$800.00 to the landlord personally, via e-transfer, starting October 31, 2018.

The text message of August 20, 2019 includes a statement by the landlord that the tenant move out "asap".

The landlord's settlement offer was made by way of a letter dated January 6, 2020 and was sent to the tenant via registered mail using the tenant's forwarding address. It also refers to the file number assigned to this Application for Dispute Resolution and proposes the landlord would pay the tenant \$1050.00 in settlement of the matter.

Analysis

Pursuant to section 2 of the *Residential Tenancy Act* (the Act), the Act applies to residential tenancy agreements entered into between a landlord and a tenant concerning a rental unit. However, section 4 provides that certain living accommodation is exempt from the application of the Act. Section 4(g) does exempt living accommodation:

- (vi) that is made available in the course of providing rehabilitative or therapeutic treatment or services,

When the parties entered into the sober living accommodation agreement in February 2018 that agreement may have been exempt from the Act pursuant to section 4(g)(vi). However, I find the tenant has put forth compelling evidence that the sober living accommodation agreement ended and a residential tenancy agreement to which the Act applies started effective October 31, 2018. Therefore, I proceed on the basis the parties were obligated to comply with the Act from October 31, 2018 onwards.

As for the payment of a security deposit, the tenant provided unopposed evidence that the \$950.00 deposit she had paid to the landlord's business in February 2018 was transferred to her residential tenancy agreement that started in October 2018. This testimony also corroborated by the landlord's offer to settle which is consistent with the landlord holding a security deposit of \$950.00. Therefore, I accept that the landlord was holding a security deposit in the amount of \$950.00 in trust for the tenant under their tenancy agreement.

Section 38(1) of the Act provides that the landlord has 15 days, from the date the tenancy ends, or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit.

In this case, I was provided unopposed evidence that the tenancy ended on August 20, 2019 pursuant to the landlord's instruction to the tenant to move out, albeit an unlawful way to end a tenancy, which the tenant complied with and vacated the rental unit on that same date. The tenant provided her forwarding address to the landlord by way of a letter posted to the landlord's door on November 12, 2019. Since the letter was posted, it is deemed to be received by the landlord three days later on November 15, 2019 pursuant to section 90 of the Act. Accordingly, I find the landlord had until November 30, 2019 to either refund the security deposit to the tenant; make a claim against the security deposit by filing a Landlord's Application for Dispute Resolution; or, obtain the tenant's written authorization to retain it. Since the landlord did not do one of these things by November 30, 2019, I find the landlord violated section 38(1) of the Act and the tenant is entitled to return of double the security deposit pursuant to section 38(6) of the Act. Therefore, I award the tenant \$1900.00 as requested.

I further award the tenant recovery of the \$100.00 filing fee she paid for this application.

In light of all of the above, I provide the tenant with a Monetary Order in the sum of \$2000.00 to serve and enforce upon the landlord.

Conclusion

The tenant was successful in this matter and has been provided a Monetary Order in the sum of \$2000.00 to serve and enforce upon the landlord.

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 30, 2020

Residential Tenancy Branch