Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 38.1 of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the tenant for a Monetary Order seeking the return of his security deposit.

The tenant submitted a signed "Proof of Service of the Tenant's Notice of Direct Request Proceeding" form which declares that on April 04, 2020, the tenant served the landlord with the Notice of Direct Request Proceeding, along with copies of supporting documents, via email. The tenant provided a copy of the email sent to the landlord on April 04, 2020, and a copy of a "read receipt" to depict that an email sent from the tenant on April 04, 2020, addressed to the email address for the landlord's agent, was received and opened by the landlord on April 04, 2020.

On March 30, 2020, the Executive Director of the Residential Tenancy Branch ("RTB") authorized a *Director's Order* which, pursuant to sections 71(2)(b) and (c) of the *Residential Tenancy Act,* orders that until the declaration of the state of emergency made under the *Emergency Program Act* on March 18, 2020 is cancelled or expires without being extended:

> *a document of the type described in section 88 or 89 of the Residential Tenancy Act has been sufficiently given or served for the purposes of the Act if the document is given or served on the person in one of the following ways:*
>
> - *the document is emailed to the email address of the person to whom the document is to be given or served, and that person confirms receipt of the document by way of return email in which case the document is deemed to have been received on the date the person confirms receipt;*

- *the document is emailed to the email address of the person to whom the document is to be given or served, and that person responds to the email without identifying an issue with the transmission or viewing of the document, or with their understanding of the document, in which case the document is deemed to have been received on the date the person responds; or*

- *the document is emailed to the email address that the person to whom the document is to be given or served has routinely used to correspond about tenancy matters from an email address that the person giving or serving the document has routinely used for such correspondence, in which case the document is deemed to have been received three days after it was emailed*

Based on the written submissions of the tenant, and pursuant to the above-noted *Director's Order,* and pursuant to sections 71(2)(b) and (c) of the Act, I find that the landlord is deemed to have received the the Direct Request Proceeding documents on April 07, 2020, three days after they were sent to the landlord by the tenant by way of email.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of all or a portion of his security deposit pursuant to section 38 of the Act? If so, should it be doubled?

Is the tenant entitled to recover the filing fee for this application from the landlord pursuant to section 72 of the Act?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

On the tenant's Application for Dispute Resolution by Direct Request (the "application"), the tenant has requested a Monetary Order seeking a return of his security deposit in the amount of $1,645.00.

On the application, the tenant attested that the tenancy ended on February 29, 2020 subsequent to a mutual agreement to end tenancy between the parties that resulted in an end of tenancy date mutually agreed to by the parties. The tenant provided a copy of the mutual agreement to end tenancy which was signed by both parties. The tenant states that he vacated the rental unit on February 29, 2020.

The tenant submitted, in part, the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant, indicating a monthly rent of $1,660.00, due on the first day of each month for a tenancy commencing on April 01, 2019. The tenancy agreement depicts that the tenant was required to pay a security deposit in the amount of $830.00, by April 03, 2019;

- A copy of a Tenant's Monetary Order Worksheet for an Expedited Return of Security Deposit and/or Pet Damage Deposit (the Monetary Order Worksheet) showing the amount of the security deposit paid by the tenant and the amount sought in return by the tenant. The tenant states that a security deposit in the amount of $830.00 was paid to the landlord on April 03, 2019. The tenant asserts that he agreed to an authorized deduction from the security deposit in the amount of $15.00 related to a key for an exterior garbage bin. The tenant did not agree to any other authorized deductions from the security deposit, and also states that there is no authorized deduction previously granted by an arbitrator permitting the landlord to retain any amount of the security deposit. The tenant seeks the balance of the security deposit in the amount of $815.00 and applicable penalties permitted under the Act.

On the Monetary Order Worksheet, the tenant provides that he and the landlord participated in both a move-in condition inspection and a move-out condition inspection. The tenant asserted that he was not provided a copy of a condition inspection report as a move-in condition inspection report was not provided by the landlord. The tenant asserted that he authorized his father, "SH", to act as his agent and participate in the move-out condition inspection on his behalf. The tenant stated that he was not provided a copy of either the move-in condition inspection report or move-out condition inspection report, and that he was able to obtain a copy of the reports only by having photographs taken of the reports.

The tenant stated that on February 29, 2020, his forwarding address was provided to the landlord by having it written on the condition inspection report during the move-out condition inspection.

The tenant also provided a copy of a "Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form" (Proof of Service of the Forwarding Address) which depicts that the tenant's agent SH provided the forwarding address to the landlord which was written on the condition inspection report during the move-out condition inspection conducted on February 29, 2020. The Proof of Service form includes a name and signature for the tenant's agent SH to attest that SH provided the forwarding address on the move-out condition inspection report. The Proof of Service form also depicts that an individual bearing the initials "KH" attests to having witnessed SH provide the forwarding address and a signature for "KH" is included on the form.

Analysis

I have reviewed all documentary evidence provided by the tenant. I find that in accordance with section 88 of the *Act* the landlord was duly served with the tenant's forwarding address on February 29, 2020, the date on which the tenant's agent provided the tenant's forwarding address to the landlord by having it written on the condition inspection report during the move-out condition inspection.

I accept the following declarations made by the tenant on the Monetary Order Worksheet:

- The tenant has not provided consent for the landlord to keep all or part of the deposits, with the exception of permitting the landlord to retain $15.00 for a key;
- There are no outstanding Monetary Orders against the tenant for this tenancy; and
- The tenant has not extinguished his right to the security deposit in accordance with sections 24(1) and 36(1) of the *Act*.

Based on the declarations provided by the tenant, I find that the landlord did not have the tenant's written consent to retain any portion of the balance of the security deposit, in the amount of $815.00, with the exception of permitting the landlord to retain $15.00 for a key.

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 or pet damage deposit through the authority of the Act, such as an order from an arbitrator, or the written agreement of the tenant.

Section 38(1) of the Act requires the landlord to either return a tenant's security deposit and/or pet damage deposit in full or file for dispute resolution for authorization to retain the deposit(s) 15 days after the *later* of the end of a tenancy, or upon receipt of the tenant's 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 security deposit and/or the pet damage deposit. There are exceptions to this outlined in sections 38(2) to 38(4) of the Act. A landlord may also under sections 38(3) and 38(4) retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator or if the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant.

Based on the declarations provided by the tenant, I find that the rights of the tenant to seek return of his security deposit have not been extinguished.

I find that the landlord did not adhere to the requirements of section 38(1) of the Act, as the landlord did not return the balance of the security deposit, in the amount of $815.00, as requested by the tenant, within 15 days of February 29, 2020 (the date on which the landlord received the tenant's forwarding address), which is the later of the dates as stated in sections 38(1)(a) and 38(1)(b) of the Act.

There is no evidence before me to show that the landlord applied for dispute resolution claiming against the security deposit within 15 days following the conclusion of the tenancy or after receiving the tenant's forwarding address.

I find that there is no evidence before me to demonstrate that the landlord received the tenant's written authorization to retain all, or a portion of the balance of the security deposit in the amount of $815.00 (after deducting the $15.00 the tenant permitted the landlord to retain) to offset damages or losses arising out of the tenancy as per section 38(4)(a) of the Act, nor did the landlord receive an order from an Arbitrator enabling him to do so.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

> (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.

Pursuant to section 38(6)(b) of the Act, a landlord is required to pay a monetary award equivalent to double the value of the security deposit if a landlord does not comply with the provisions of section 38 of the Act. I find that the landlord failed to adhere to 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 must order that the landlord pay the tenant double the amount of the security deposit.

Residential Tenancy Policy Guideline 17 states that "unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit." However, the tenant has not provided any such waiver; therefore the provisions of section 38(6)(b) must be applied.

The tenant is therefore entitled to a monetary award in the amount of $1,630.00, representing a doubling of the tenant's unreturned security deposit ($815.00 x 2).

As the tenant was successful in this application, I find that the tenant is entitled to recover the $100.00 filing fee paid for this application.

Conclusion

Pursuant to sections 38, 67, and 72 of the Act , I issue a Monetary Order in the tenant's favour in the amount of $1,730.00 against the landlord, calculated as follows:

Item	**Amount**
Doubling of unreturned Security Deposit ($815.00 x 2)	$1,630.00
Recovery of Filing Fee	$100.00
Total Monetary Award to Tenant	**$1,730.00**

The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord(s) 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: May 27, 2020

Residential Tenancy Branch