



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67.

The landlords did not attend this hearing, although I left the teleconference hearing connection open until 1:41 p.m. in order to enable the landlords to call into this teleconference hearing scheduled for 1:30 p.m. 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. Advocate K.C. and advocate M.P. also attended the hearing and were provided an opportunity to advocate on behalf of the tenant. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and his advocates and I were the only ones who had called into this teleconference.

The tenant testified that the landlords were served with his application for dispute resolution via registered mail on January 24, 2020. A Canada Post registered mail receipt stating same was entered into evidence. The tenant testified that shortly after he mailed the landlords his application for dispute resolution the landlords texted him and informed him that they received the Canada Post pick up slip but were not going to pick the package up.

I find that the landlords are not entitled to avoid the legal ramifications of being served by avoiding service. Pursuant to section 90 of the *Act*, I find that the landlords were deemed served with the tenant's application for dispute resolution on January 29, 2020, five days after its registered mailing. I find that the tenant's application for dispute resolution was served in accordance with section 89 of the *Act*.

Issue to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the tenant and the submissions of his advocates, not all details of their respective 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 provided the following undisputed testimony. This tenancy began on February 1, 2019 and ended on November 30, 2019. Monthly rent in the amount of \$1,050.00 was payable on the first day of each month. A non profit housing society paid the landlord \$400.00 towards the required \$525.00 security deposit. The tenant paid the landlord the remaining \$125.00. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenant testified that he left his forwarding address in the landlord's mailbox on November 1, 2020, when he found a new place to live. The tenant testified that he did not authorize the landlord to retain any portion of his security deposit. The tenant testified that the landlord returned \$250.00 of his security deposit to the non-profit housing society on December 10, 2019. The tenant testified that the landlord refused to return the remainder of the security deposit because of alleged cleaning deficiencies. The tenant testified that the subject rental property was clean when he vacated it.

The landlord did not file an application with the Residential Tenancy Branch for authorization to retain the tenant's security deposit.

The tenant testified that he is seeking the return of double his security deposit.

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 security 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 security 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)).

I accept the tenant's undisputed testimony that he provided the landlord with his forwarding address on November 1, 2019. I find that the landlord was deemed served with the tenant's forwarding address on November 4, 2019, in accordance with section 88 and 90 of the *Act*.

I accept the tenant's testimony that the landlord only returned \$250.00 of the security deposit to the non profit housing society and that he did not authorize any deductions. Based on the above, I find that the landlord breached section 38 of the *Act* by failing to either:

- a. return the entirety of the tenant's security deposit within 15 days of the end of the tenancy; or
- b. file an application for dispute resolution for authority to retain the deposit.

Therefore, the tenant is entitled to receive double his security deposit as per the below calculation:

$$\begin{aligned} & \$525.00 \text{ (security deposit)} * 2 \text{ (doubling provision)} = \$1,050.00 - \$250.00 \\ & \text{(amount of security deposit the landlords returned)} = \mathbf{\$800.00} \end{aligned}$$

Conclusion

I issue a Monetary Order to the tenant in the amount of \$800.00.

The tenant is provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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: June 15, 2020

Residential Tenancy Branch