



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR

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 her security deposit.

The tenant submitted a signed “Proof of Service of the Tenant’s Notice of Direct Request Proceeding” form which declares that on May 27, 2020 the tenant served the landlord “PB” with the Notice of Direct Request Proceeding, along with copies of supporting documents, via registered mail. The tenant provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the tenant, and in accordance with sections 89 and 90 of the *Act*, I find that the landlord PB is deemed to have received the Direct Request Proceeding documents on June 01, 2020, the fifth day after their registered mailing.

The tenant has not provided a signed, completed Proof of Service of the Tenant’s Notice of Direct Request Proceeding form for the respondent “ZB” and has not established that the respondent “ZB” has been served the Notice of Direct Request Proceeding documents. Therefore, I dismiss the tenant’s application against the respondent “ZB” with leave to reapply. I will hear the tenant’s application against the tenant “PB” only.

Issue(s) to be Decided

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

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 her security deposit in the amount of \$838.00

On the application, the tenant attested that the tenancy ended on February 01, 2020, the date on which the tenant vacated the rental unit subsequent to a tenant's notice to end the tenancy.

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 \$1,800.00, due on the first day of each month for a tenancy commencing on September 03, 2019. The tenancy agreement depicts that the tenant was required to pay a security deposit in the amount of \$900.00, by August 28, 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 \$900.00 was paid to the landlord on August 28, 2019. The tenant asserts that she agreed to an authorized deduction from the security deposit in the amount of \$62.00 related to a pro-rated amount of rent owed for one day. 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 attested that she is not aware of any monetary order made against the security deposit or any monetary order for the tenant to pay an amount to the landlord that remains unpaid. The tenant seeks the return of the balance of the security deposit in the amount of \$838.00.

The tenant provided a copy of a receipt dated August 28, 2019 which depicts that the tenant provided \$900.00 for a deposit.

On the Monetary Order Worksheet, the tenant attested that she was not given at least one opportunity to participate in a move-in condition inspection by the landlord. The tenant additionally attested that neither she nor an authorized representative participated in a move-in condition inspection as the landlord did not conduct a move-in condition inspection. The tenant asserted that she was not provided a copy of a

condition inspection report as a move-in condition inspection was not conducted by the landlord.

On the Monetary Order Worksheet, with respect to matters related to the end of the tenancy, the tenant attested that she was not given at least one opportunity to participate in a move-out condition inspection by the landlord. The tenant additionally attested that neither she nor an authorized representative participated in a move-out condition inspection as the landlord did not conduct a move-out condition inspection. The tenant asserted that she was not provided a copy of a condition inspection report at the end of the tenancy as a move-out condition inspection was not conducted by the landlord.

The tenant provided a copy of a letter addressed to the landlord, dated February 01, 2020, in which she provided her forwarding address and expressed that she sought the return of her security deposit in the amount of \$838.00 and authorized the landlord to deduct an amount from the deposit equivalent to a pro-rated amount representing rent owed for one day.

The tenant asserted that the letter was served to the landlord on February 01, 2020 by attaching a copy to a door at the address at which the landlord resides.

Additionally, the tenant 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 served the February 01, 2020 letter containing the tenant's forwarding address by attaching a copy to a door at the address at which the landlord resides. The Proof of Service form establishes that the service was witnessed by "CM" and a signature for "CM" is included on the form.

Analysis

I have reviewed all documentary evidence provided by the tenant. Section 90 of the *Act* provides that because the letter containing the tenant's forwarding address was served by way of attaching a copy to a door at the address at which the landlord resides, the landlord is deemed to have received the forwarding address three days after the letter was posted to a door at the address at which the landlord resides. In accordance with sections 88 and 90 of the *Act*, I find that the landlord is deemed to have received the letter containing the tenant's forwarding address on February 04, 2020, three days after it was posted to a door at the landlord's residence.

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 \$62.00 for pro-rated rent;

- There are no outstanding Monetary Orders against the tenant for this tenancy; and
- The tenant has not extinguished her 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 \$838.00, with the exception of permitting the landlord to retain \$62.00 for pro-rated rent.

I have reviewed all documentary evidence and I find that the tenant paid a security deposit in the amount of \$900.00.

I accept the tenant's statement on the Monetary Order Worksheet that the tenancy ended on February 01, 2020, the date on which the tenant vacated the rental unit.

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 her 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 \$838.00, as requested by the tenant, within 15 days of February 04, 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 \$838.00 (after deducting the \$62.00 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 \$1,676.00, representing a doubling of the tenant's unreturned security deposit (\$838.00 x 2).

Conclusion

Pursuant to sections 38 and 67 of the Act, I issue a Monetary Order in the tenant's favour in the amount of \$1,676.00 against the landlord, calculated as follows:

| Item | Amount |
|--|-------------------|
| Doubling of unreturned Security Deposit (\$838.00 x 2) | \$1,676.00 |
| | |
| Total Monetary Award to Tenant | \$1,676.00 |

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: June 02, 2020

Residential Tenancy Branch