



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on January 24, 2020 seeking a monetary order for the return of the security and pet deposits they paid at the start of a past tenancy. The matter proceeded by way of a hearing pursuant to section 734(2) of the *Residential Tenancy Act* (the “Act”) on June 16, 2020. In the conference call hearing I explained the process and offered the attending party the opportunity to ask questions.

Neither the tenant nor the landlord attended the hearing; however, an agent for the tenant called and presented submissions on behalf of the tenant. Based on the evidence provided by the tenant, I am satisfied there is a relationship between the tenant and their agent such that the agent is in a position to present evidence and make submissions on the tenant’s behalf. A letter from the tenant to the Residential Tenancy Branch when they applied gives their agent’s name and contact information for all matters pertaining to this matter.

To proceed with this hearing, I must be satisfied that the tenant made reasonable attempts to serve the landlord with the Notice of Dispute Resolution for this hearing. This means the tenant must provide proof that the document was served using a method allowed under section 89 of the *Act*, and I must accept that evidence.

The tenant’s agent set out how they served the Notice for this hearing via registered mail and provided that tracking number. The address used was that of the landlord as listed in the application; the agent’s submission is that this is a verified address as a place of contact for the landlord. This package to the landlord also contained the evidence they intended to rely on for this hearing.

Based on the submissions of the landlord's agent, I accept they served the Notice of this hearing in a manner complying with section 89(1)(c) of the *Act*. The hearing thus proceeded in the landlord's absence with the tenant's agent.

Issue(s) to be Decided

Are the tenants entitled to an Order granting a refund of double the amount of the security deposit and pet damage deposit pursuant to section 38 of the *Act*?

Background and Evidence

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

There is no copy of the tenancy agreement between the parties in the evidence. The tenant submitted a single document entitled 'Shelter Information'. This is a standard form of the Ministry of Social Development and Poverty Reduction that helps to determine whether a person is entitled to a rental supplement.

This document shows the rental unit address, the total rent for \$750.00, and a "rental start date" of April 26, 2019. The document shows that a security deposit was required, with the tenant's portion here being \$375.00. The landlord for this unit is listed on the document, with their separate address shown as well.

The tenant is claiming the total amount of this security deposit, \$375.00.

The tenant provided a copy of an email they sent to the landlord on December 2, 2019 wherein they stated this was their "30 day notice of leaving [their] property". They stated they will be leaving "by December 31st at the latest." The landlord replied on the same day to state: "Your notice is accepted . . ."

The tenant's agent stated in the hearing that they sent a letter to the landlord directly, on the tenant's behalf, on December 27, 2019 to ask for the return of the security deposit. Prior to the tenant's application for this hearing, the landlord sent another message as a reminder about the security deposit to the landlord on January 14, 2020. With no reply, the tenant then applied for this hearing.

Following this, the tenant's agent emailed to the landlord directly and supplied the tenant's forwarding address. This was on January 23, 2020.

The landlord provided no evidence for this hearing and did not attend to speak to the issue at hand.

Analysis

Section 38(1) of the *Act* provides that a landlord must either: repay a security or pet deposit; or apply for dispute resolution to make a claim against those deposits. This must occur within 15 days after the later of the end of tenancy or the tenant giving a forwarding address.

Section 38(4) provides that a landlord may retain a security deposit or pet deposit if the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. This subsection specifies this written agreement must occur at the end of a tenancy.

Section 38(6) sets out the consequences where the landlord does not comply with the requirements of section 38(1). These are: the landlord may not make a claim against either deposit; and, the landlord must pay double the amount of either deposit, or both.

I find as fact, based on their undisputed evidence and testimony, the tenant gave their forwarding address to the landlord as provided for in their evidence: their agent provided this to the landlord via email direct to the landlord on January 23, 2020. I am satisfied that the email channel is one that was established between the parties. Evidence of this is the communication from the tenant to the landlord on December 2, 2019 to advise of the end of tenancy – this is the same email used by the agent to advise the landlord of the forwarding address.

On this point, I find the evidence of the tenant is undisputed. I am satisfied that the tenant's new forwarding address was within the landlord's knowledge, as necessary, by January 23, 2020. By not returning the security and pet damage deposits, and not applying for dispute resolution on a claim against the deposits, I find the landlord's actions constitute a breach of section 38 of the *Act*. The landlord must pay the tenant double the amount of the security deposit and pet damage deposit, as per section 38(6) of the *Act*.

Conclusion

I order the landlord to pay the tenant the amount of \$750.00 which is double the amount of the security deposit. I grant the tenant a monetary order for this amount. This order must be served on the landlord. Should the landlord fail to comply with this monetary order it may be filed in the Provincial Court (Small Claims) 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 24, 2020

Residential Tenancy Branch