



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSD, FFT**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An order for the return of a security deposit or pet damage deposit pursuant to section 38; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant attended at the date and time set for the hearing of this matter. The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:50 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant testified the address noted on her Application for Dispute Resolution Proceedings Package shows the mailing address for the landlord is in British Columbia when it is actually in Alberta. The Post Office box number, street address and city are all correct. The tenant testified she sent the Notice of Dispute Resolution Proceedings package to the landlord by registered mail to the landlord at the correct address in Alberta on June 12, 2020 and provided the tracking number for the mailing. The tracking number is recorded on the cover page of this decision. The tenant testified she also sent the entire package by email to the email address used between the parties for e-transfers of rent money. In accordance with the *Ministerial Order M089* issued March 30, 2020, pursuant to the State of Emergency declared on March 18, 2020 ("Covid-19 Order") allowing service by email, I find that the landlord was sufficiently served with the Notice of Dispute Resolution Proceedings package three days after service by email, on June 15, 2020.

Issue(s) to be Decided

Should the tenant's security deposit be returned to her?

Can the tenant recover the filing fee?

Background and Evidence

The tenant provided the following undisputed testimony. The fixed one-year tenancy began on October 1, 2018 becoming month to month at the end of the fixed term. Rent was set at \$1,300.00 per month payable on the first day of each month. A security deposit of a full month's rent, or \$1,300.00 was collected at the commencement of the tenancy. No condition inspection report was done with the tenant when the tenancy began.

The tenant gave the landlord a notice to end the tenancy on March 16, 2020 with an effective date of April 30, 2020. The tenant moved out of the rental unit on March 27th, however paid rent for the month of April. The tenant served the landlord her forwarding address on May 19, 2020 by regular mail, email and Facebook messenger. A copy of the letter advising of the forwarding address was provided as evidence.

The tenant testified that on May 17th, the landlord responded to her Facebook message and gave her the following reason for not returning her security deposit: *"...I was unable to refund the deposit cause I couldn't end up filling my house with renters. I was hoping to get renters in there and there would have been no issue."* A screenshot of the message was provided as evidence.

The tenant testified the parties did not conduct a condition inspection report at move out due to the covid-19 concerns about social distancing. Since the May 17th message, the landlord has not communicated with the tenant.

Analysis

At the commencement of the tenancy, the landlord did not pursue a condition inspection of the suite with the tenant, as required by section 23 of the *Act*. Pursuant to section 24, the landlord's right to claim against the security deposit is extinguished if the landlord does not offer the tenant at least two opportunities for inspection.

Section 38(5) and (6) of the *Act* state that when the landlord's right to claim against the security deposit is extinguished, the landlord may not make a claim against it and must pay the tenant double the amount of the security deposit or pet damage deposit, or

both, as applicable. This is further clarified in Residential Tenancy Branch Policy Guideline PG-17 which says, in part C-3:

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 if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

Further, section 38(1) of the Act states:

Except as provided in subsection (3) or (4) (a), **within 15 days after** the later of

- a) the date the tenancy ends, and
- b) **the date the landlord receives the tenant's forwarding address in writing**, the landlord must do one of the following:
- c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the landlord's response to the tenant by Facebook messenger, I am satisfied the landlord received the tenant's forwarding address in writing on May 17th. The landlord was obligated to return the tenants security deposit by June 1, 2020, at the latest. There is no indication he did so. The landlord's right to claim against the security deposit was extinguished for his failure to do a condition inspection report with the tenant at the commencement of the tenancy, contrary to section 24. Second, the landlord did not return the security deposit or file a claim against it within 15 days of receiving the tenant's forwarding address contrary to section 38(1)(b).

The language of section 38(6)(b) is mandatory. The landlord must pay the tenant \$2,600.00, representing a doubled security deposit.

As the tenant's application was successful, the tenant is also entitled to recover the \$100.00 filing fee for the cost of this application.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$2,700.00.

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: July 10, 2020

Residential Tenancy Branch