



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 landlord did not attend the hearing, although I left the teleconference connection open throughout the hearing which commenced at 1:30 p.m. and ended at 1:55 p.m. 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 I were the only ones who had called into this teleconference.

The tenant testified that he served the Notice of Dispute Resolution Proceedings to the landlord by email on April 23, 2020 in accordance with the Residential Tenancy Branch Director's Order dated March 30, 2020 allowing for service by email pursuant to section 71 of the Act. The tenant testified that the landlord routinely used the email address of j.....@live.ca and cited an email dated December 9, 2018 at 8:42 p.m. as an example of a correspondence from that email address. The tenant's security deposit was also sent by e-transfer to the landlord at the same email address which the landlord acknowledges receiving on a text message. I am satisfied the Notice of Dispute Resolution Proceedings was served three (3) days after the email was sent in accordance with the Director's order made pursuant to section 71.

Issue(s) to be Decided

Should the tenant's security deposit be returned (doubled)?

Can the tenant recover the filing fee?

Background and Evidence

The tenant gave the following undisputed testimony. The tenant rented a room in a house operated by the landlord. The landlord did not live in the house, although she periodically came by. No written tenancy agreement was signed and the tenant paid \$500.00 per month to rent the room. A text message was provided whereby the landlord acknowledges receiving a deposit of \$500.00 on December 10, 2018 which the tenant testified represents the security deposit.

The tenant testified that he sent the landlord a text message on March 23rd advising that he would be moving out in May unless the landlord wants someone to come take over the room in April. The landlord responded that she wanted the tenant gone by April and re-rented his room for that month. No copies of the texts were submitted.

On April 2, 2020, the tenant sent the landlord an email seeking the return of his \$500.00 security deposit. The address of the rental unit and the tenant's full forwarding address was provided in the email, supplied as evidence in this proceeding. The tenant last got a correspondence from the landlord on April 3, 2020 regarding an unrelated matter. He hasn't heard from her since.

Analysis

The tenant provided his forwarding address in writing in by email in accordance with the Director's order regarding service on April 2, 2020. I deem the forwarding address served upon the landlord 3 days later, on April 5, 2020 in accordance with the Director's order made pursuant to section 71.

Section 38(1) and 38(6) of the Act states the following:

- 38** (1) 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.
- (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.

The landlord was required to return the full security deposit within fifteen days after receiving the forwarding address or make an application for dispute resolution to claim against the security deposit, pursuant to Section 38(1). The landlord has provided no evidence that she has returned any amount or made an Application to claim against the deposit at all.

As the language of section 38(6)(b) is mandatory, I have no capacity to change it. The landlord did not comply with section 38(1) of the Act and must therefore pay the tenants double the security deposit. I order the landlord to pay the tenants double the amount of the \$500.00 security deposit or \$1,000.00.

The tenant was successful in his application and the filing fee of \$100.00 will be recovered.

Conclusion

I issue a monetary order in the amount of \$1,100.00 in favour of the tenant pursuant to section 67 of the *Residential Tenancy Act*.

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: August 27, 2020

Residential Tenancy Branch