



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

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 for the return of double the security deposit (the deposit).

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on August 14, 2020, the tenant sent each of the respondents the Notice of Direct Request Proceeding by registered mail. The tenant provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the respondents are deemed to have been served with the Direct Request Proceeding documents on August 19, 2020, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation for the return of a security deposit pursuant to sections 38 and 67 of the *Act*?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

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.

The tenant submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by Landlord C.H. and the tenant on April 14, 2008, indicating a monthly rent of \$1,000.00 and a security deposit of \$1,000.00, for a tenancy commencing on May 1, 2008;
- A copy of a decision from a Residential Tenancy Branch Arbitrator indicating that the landlords were provided the tenant's forwarding address at a dispute resolution hearing on November 21, 2019;
- 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 indicates that the forwarding address was provided to the landlord at a dispute resolution hearing on November 21, 2019; and
- 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 deposit paid by the tenant and indicating the tenancy ended on July 25, 2019.

Analysis

Paragraph 12 (1) (b) of the Residential Tenancy Regulation establishes that a tenancy agreement is required to be "signed and dated by both the landlord and the tenant."

I find that Landlord S.H. has not signed the tenancy agreement, which is a requirement of the Direct Request process.

For this reason, I will only proceed with the portion of the tenant's application naming Landlord C.H. as a respondent.

Section 38(1) of the *Act* states that the landlord has fifteen days from the end of tenancy and the date they received the forwarding address to either return the deposit(s) in full or make an application for dispute resolution claiming against the deposit(s).

Section 38(6) of the *Act* states that if the landlord does not return the deposit(s) or file a claim against them within the fifteen days, the landlord must pay the tenant double the amount of the deposit(s).

I have reviewed all documentary evidence and I find that the tenant paid a security deposit in the amount of \$1,000.00 on April 14, 2008, as per the tenancy agreement.

I accept the following declarations made by the tenant on the Monetary Order Worksheet:

- The tenant has not provided consent for Landlord C.H. to keep all or part of the deposit;
- There are no outstanding Monetary Orders against the tenant for this tenancy; and

- The tenant has not extinguished their right to the deposit in accordance with sections 24(1) and 36(1) of the *Act*.

I find that the tenancy ended on July 25, 2019, the date indicated on the Monetary Order Worksheet and the previous dispute resolution decision.

I find that Landlord C.H. was served with the forwarding address on November 21, 2019, during a dispute resolution hearing through the Residential Tenancy Branch.

I accept the evidence before me that Landlord C.H. has failed to return the deposit to the tenant and has not filed an Application for Dispute Resolution requesting to retain the deposit by December 6, 2019, within the fifteen days granted under section 38(1) of the *Act*.

Based on the foregoing, I find that Landlord C.H. must pay the tenant double the amount of the security deposit in accordance sections 38(6) of the *Act*.

I note that the previous Arbitrator indicated in their decision that the interest payable on a deposit of \$1,000.00 paid on April 14, 2008 was \$12.01. However, using Deposit Interest Calculator available from the Residential Tenancy Branch website, I find that the amount of interest payable is in fact, \$10.74.

Furthermore, I note the tenant has requested the interest payable be doubled in their Application for Dispute Resolution. However, Policy Guideline #17 provides the following clarification:

"Where the landlord has to pay double the security deposit to the tenant, interest is calculated only on the original security deposit amount before any deductions and is not doubled."

For these reasons, I find that Landlord C.H. must pay the tenant interest on the security deposit in the amount of \$10.74.

Therefore, I find that the tenant is entitled to a monetary award in the amount of \$2,010.74, the amount claimed by the tenant for double the security deposit and interest on the security deposit, as of the date of this application, August 5, 2020.

As the tenant was partially successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the tenant a Monetary Order in the amount of \$2,110.74 for the return of double the security deposit, for interest on the security deposit, and for the recovery of the filing fee for this application. The tenant is provided with this Order in the above terms and Landlord C.H. must be served with **this Order** as soon as possible. Should Landlord C.H. 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.

I dismiss the portion of the tenant's application for a Monetary Order naming Landlord S.H. as a respondent without leave to reapply.

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 20, 2020

Residential Tenancy Branch