



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for the return of double the \$400.00 security deposit that the Landlord is holding without cause; and to recover the \$100.00 cost of her Application filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing, the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I considered service of the Application for Notice of Dispute Resolution Hearing and the documentary submissions. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that she served the Landlord with the Notice of Hearing documents by email sent on May 18, 2020. The Tenant provided a copy of an email from the Landlord replying to the Tenant's service email, as evidence of service. I find that the Landlord was deemed served with the Notice of Hearing documents in accordance with the Act.

The Landlord said that he understood that the RTB would forward to the Tenant, his documentary submissions that he had uploaded to the RTB. However, as I said in the hearing, each party is responsible for serving their own evidence on the other party in compliance with the Act. I find that the Tenant was not served with the Landlord's evidence, and therefore, I did not admit the Landlord's evidentiary documents, although I continued to hear from the Parties in the hearing.

Preliminary and Procedural Matters

The Parties confirmed their email addresses at the outset of the hearing, as well as their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Prior to the Parties' testifying, I advised them that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on September 19, 2019, with a monthly rent of \$950.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$400.00 and no pet damage deposit. The Parties agreed that the Tenant gave the Landlord 30 days' written notice of her intention to end the tenancy. The Parties agreed that the Tenant vacated the rental unit on January 11, 2020.

The Tenant said that she gave the Landlord her forwarding address in writing on many occasions. She said that in her notice to end the tenancy, she told him that she wanted her security deposit back. The Tenant said she also emailed the Landlord her forwarding address on February 13, 2020, to an email address to which he regularly responded. The Landlord said he had trouble with that email address at the time, and that he received some email and not others. He suggested that this is probably what happened to the Tenant's email of February 13, 2020.

The Tenant said she also deposited her forwarding address into the Landlord's mail box at the residential property on March 19, 2020 at 5:00 p.m. The Tenant directed my attention to a witness statement confirming this action. The witness statement says:

March 21, 2020

To whom it may concern,

My name is [O.E.], I was present on March 19, 2020 with [the Tenant] to drop off [the Tenant's] forwarding address to her former landlord. This was done at about 1700. We drove to [the residential property address] together, and I witnessed [the Tenant], with the letter in her hand, place it in the landlord's mailbox.

Thank you

[Signature]
[O.E.]

The Landlord said:

I totally get that she's claiming she's served me with the letter. I agreed to returning the deposit, after ensuring room was ready to go. I'm travelling a lot. Receiving pictures isn't a viable form to record [the condition of the rental unit at the end of the tenancy]. I didn't receive any forwarding addresses. She was not welcome on my property when she dropped off the mail. The individual could have provided a tracking number. Witness? I need viable proof.

I advised the Landlord in the hearing that he, not a tenant, is responsible for arranging an inspection of the condition of a rental unit at the end of a tenancy, pursuant to section 35(2) of the Act.

The Landlord also acknowledged receipt of the Tenant's forwarding address in the Application documents, with which I found that he had been served.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

I find that the Tenant provided her forwarding address to the Landlord on March 19, 2020, and that the tenancy ended on January 11, 2020. Section 38(1) of the Act states the following about the connection of these dates to a landlord's obligations surrounding the return of the security deposit:

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.

The Landlord was required to return the \$400.00 security deposit within fifteen days of March 19, 2020, namely by April 3, 2020, or apply for dispute resolution to claim against the security deposit, pursuant to section 38(1). The Landlord provided no evidence that he returned any amount of the security deposit or applied to the RTB for dispute resolution, claiming against the security deposit. Therefore, I find the Landlord failed to comply with his obligations under section 38(1) of the Act.

Section 38(6)(b) states that if a landlord does not comply with section 38(1) that the landlord must pay the tenant double the amount of the security deposit. There is no interest payable on the security deposit.

I, therefore, grant the Tenant and **\$800.00** monetary award from the Landlord in recovery of double the security deposit, pursuant to sections 38 and 67 of the Act. Given the Tenant's success in her Application, I also award her recovery of the **\$100.00** Application filing fee under section 72 of the Act for a total monetary award of **\$900.00**.

Conclusion

The Tenant is successful in her claim against the Landlord for return of double the security deposit in the amount of \$800.00. The Landlord did not return the Tenant's security deposit or apply for dispute resolution within 15 days of the later of the end of the tenancy and the date on which the Landlord received the Tenant's forwarding address. I award the Tenant with double the amount of the \$400.00 security deposit, plus recovery of the \$100.00 Application filing fee.

I grant the Tenant a Monetary Order under section 67 of the Act from the Landlord in the amount of **\$900.00**.

This Order must be served on the Landlord by the Tenant and may be filed in the

Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: September 14, 2020

Residential Tenancy Branch