



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing originated as a Direct Request and was ordered to reconvene as a participatory hearing in a Direct Request Decision dated July 23, 2020. This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The Direct Request Decision stated:

The applicant must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon the landlord within three (3) days of receiving this decision in accordance with section 89 of the *Act*.

The tenant testified that the landlord was served with the above documents via registered mail on July 23, 2020. The tenant provided a Canada Post tracking number to confirm the above mailing, the tracking number is located on the cover page of this decision. The Canada Post website states that the above package was delivered on July 27, 2020. I find that the above documents were served in accordance with section 89 of the *Act*.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:30 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:030 p.m. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the tenant, not all details of the tenant's submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant provided the following undisputed testimony. This tenancy began on August 31, 2019 and ended on April 29, 2020. Monthly rent in the amount of \$2,700.00 was payable on the first day of each month. A security deposit of \$1,350.00 was paid by the tenant to the landlord.

The tenant testified that he sent the landlord his forwarding address in writing via regular mail within five days of the end of this tenancy and texted the landlord with his forwarding address. The text message dated April 2, 2020 was entered into evidence.

The tenant testified that the landlord did not return any portion of the security deposit and that he did not give the landlord authority to retain any portion of the security deposit.

The tenant testified that the landlord has not served him with an application for dispute resolution seeking authorization to retain any portion of his deposit.

Analysis

Section 38 of the Act requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit.

However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I accept the tenant's undisputed testimony that he provided the landlord with his forwarding address in writing in May of 2020 via regular mail. Regular mail is a method of service approved under section 88 of the *Act*. I find that pursuant to section 90 of the *Act*, the landlord was deemed served with the tenant's forwarding address by the end of May 2020.

I accept the tenant's undisputed testimony that the landlord has not returned any portion of his deposit and that he did not authorize the landlord to retain any portion of his deposit. I accept the tenant's undisputed testimony that the landlord has not served him with an application for dispute resolution for authority to retain any portion of his deposit.

I find that the landlord did not return the tenant's security deposit within 15 days of receipt of the tenant's forwarding address in writing. I find that the landlord has not filed an application with the Residential Tenancy Branch for authorization to retain the tenant's security deposit. Pursuant to section 38(6)(b) of the *Act*, I find that the tenant is entitled to a monetary award of double the security deposit in the amount of \$2,700.00.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$2,800.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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.

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: November 10, 2020

Residential Tenancy Branch