



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSDS-DR, FFT**

Introduction

This hearing, redirected from a Direct Request proceeding, dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A return of the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that they served the landlord with the Notice of Reconvened Hearing and all evidence by registered mail sent on September 17, 2020. The tenant provided a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the landlord is deemed served with the tenant's materials on September 22, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a return of the deposit for this tenancy?
Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

The tenant provided undisputed testimony regarding the following facts. This periodic tenancy began in June, 2014. The tenant paid a security deposit of \$600.00 at the start of the tenancy which is still held by the landlord. No condition inspection report was prepared at any time for this tenancy.

The tenant submitted into documentary evidence a copy of the written tenancy agreement showing that security deposit in the amount of \$600.00 was payable at the start of the tenancy. The tenant submits that they paid the full security deposit with some funds being loaned to them by a government program. The tenant further testified that during the tenancy the landlord demanded an additional \$25.00 deposit which the tenant paid.

The tenancy ended on April 30, 2020. The tenant gave the landlord her forwarding address in writing in a letter dated May 3, 2020. The tenant did not give the landlord authorization to deduct any amount from the security deposit for this tenancy. As of the date of the hearing, November 5, 2020, the landlord has not returned any portion of the security deposit for this tenancy to the tenant.

Analysis

Section 19(a) of the Act prohibits a landlord from requiring or accepting more than half a month's rent as a deposit and the payment of a greater amount is to be treated as an overpayment.

Section 20(a) provides that a landlord must not require a security deposit at any time other than when the tenant and landlord enter into the tenancy agreement.

While the tenant did not provide documentary evidence of the additional payment of \$25.00 made during the tenancy, I find their cogent and detailed testimony sufficient to establish that they made the payment. It is evident that the demand for an additional security deposit was in violation of sections 20(a) and 19(a) of the Act. I find that the payment of \$25.00 to be an overpayment that the tenant is entitled to recover and I issue a monetary award for that amount.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must 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 permission to keep all or a portion of the security deposit as per section 38(4)(a).

Additionally, section 24 of the *Act* provides that if the landlord does not complete a condition inspection report in accordance with the guidelines, they extinguish their right to claim against the security deposit.

I accept the undisputed evidence that the tenant provided the landlord with their forwarding address in writing on May 3, 2020. I accept the evidence of the tenant that the landlord failed to return the full security deposit to the tenant within 15 days of May 3, 2020, the time frame granted under section 38 (1)(c) of the *Act*. The landlord's right to claim against the security deposit was extinguished by their failure to complete a condition inspection report and no claim was filed by the landlord in any event.

I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$1,200.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

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

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1,325.00 against the landlord. The tenant is provided with a Monetary 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 5, 2020

Residential Tenancy Branch