



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

TT: MNSDS-DR

LL: MNDL-S, MNRL, MNDCL, FFL

Introduction

This hearing dealt with applications from both the landlord and tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- A monetary award for unpaid rent, damages and loss pursuant to section 67;
- Authorization to retain the deposits for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant, in their application redirected from a Direct Request proceeding applied for:

- A return of all or a portion of their security deposit pursuant to section 38.

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, evidence and all materials by registered mail sent on July 20, 2020 by registered mail. The tenant provided a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find the landlord is deemed served with the tenant’s materials on July 25, 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 monetary award equivalent to double the value of the security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the landlord entitled to any of the relief sought?

Background and Evidence

The tenant provided undisputed evidence on the following facts. This tenancy began in August, 2019 and ended in April, 2020. A security deposit of \$1,250.00 was paid at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at any time during the tenancy.

The tenant provided their forwarding address in writing to the landlord in the prescribed form for the Tenant's Notice of Forwarding Address for the Return of Security Deposit dated June 9, 2020. The tenant testified that they sent their Forwarding Address to the landlord by registered mail sent on June 10, 2020. The tenant provided a valid Canada Post tracking receipt as evidence of service.

The tenant testified that they have not given written authorization that the landlord may retain any portion of the deposit for this tenancy. The landlord has returned no portion of the deposit as at the date of the hearing.

Analysis

The landlord did not attend the hearing which was scheduled by conference call at 1:30pm. Rule 7.3 of the Rules of Procedure provides that:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply.

Consequently, I dismiss the landlord's application in its entirety without leave to reapply.

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).

I accept the evidence of the tenant that this tenancy ended in April, 2020 and the tenant served their forwarding address to the landlord in writing on June 10, 2020. Based on the evidence I find that the forwarding address is deemed served on the landlord on June 15, 2020, five days after mailing, in accordance with sections 88 and 90 of the *Act*. Therefore, the landlord had 15 days from June 15, 2020 to either return the deposit in full or file an application for dispute resolution for authorization to retain the deposit.

Furthermore, I accept the evidence of the tenant that no condition inspection report was prepared at any time for this tenancy. Section 24(2) of the *Act* provides that a landlord that does not comply with the *Act* by preparing a condition inspection report extinguishes their right to claim against a security deposit. Accordingly, I find the landlord had extinguished their right to claim against the security deposit by failing to prepare a condition inspection report as required under the *Act*.

Based on the undisputed evidence before me, I find that the landlord has extinguished their right to claim against the security deposit and failed to return the deposit in full to the tenant within the 15 day time limit under the *Act*. 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 a \$2,500.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$2,500.00. 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 9, 2020

Residential Tenancy Branch