



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NOVA RELOCATION INC. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on October 09, 2020 (the “Application”). The Tenant applied for return of double the security deposit as well as reimbursement for the filing fee. This was an adjourned direct request.

The Tenant appeared at the hearing. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenant. The Tenant provided affirmed testimony.

The Tenant submitted evidence prior to the hearing. The Landlord did not. I addressed service of the hearing package and Tenant’s evidence.

The Tenant testified that the hearing package, Interim Decision and evidence were sent to the Landlord by registered mail November 02, 2020. The Tenant confirmed Tracking Number 1 relates to this. The customer receipt with Tracking Number 1 on it is in evidence. The Canada Post website shows the package was delivered and signed for November 06, 2020.

Based on the undisputed testimony of the Tenant, evidence and Canada Post website information, I am satisfied the hearing package, Interim Decision and evidence were served on the Landlord in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the “Act”). Based on the Canada Post website information, I am satisfied the Landlord received the package November 06, 2020. I am also satisfied based on the evidence that the Tenant complied with rule 3.1 of the Rules of Procedure (the “Rules”) in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenant was given an opportunity to present relevant evidence and make

relevant submissions. I have considered the relevant documentary evidence and all oral testimony of the Tenant. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant provided the following testimony and evidence.

There was a tenancy agreement between the parties. The tenancy started December 01, 2019 and was for a fixed term ending January 31, 2020. Rent was \$1,200.00 per month due on the first day of each month. The Tenant paid a \$600.00 security deposit.

The Tenant submitted invoices relating to the tenancy agreement. The Tenant submitted a receipt for the security deposit.

The tenancy ended January 31, 2020.

Their forwarding address was sent to the Landlord by registered mail May 04, 2020. Tracking Number 2 relates to this.

The Tenant submitted a receipt with Tracking Number 2 on it as well as a confirmation of delivery from Canada Post showing the Landlord received the package May 06, 2020.

The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy.

The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

The Landlord did not apply to the RTB to keep the security deposit.

The Landlord still holds the security deposit.

The Tenant did move-in and move-out inspections with the Landlord.

The Tenant submitted correspondence between the parties.

Analysis

Section 38 of the *Act* sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit in full or file a claim with the RTB against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

I accept the undisputed testimony of the Tenant and based on this, as well as the documentary evidence submitted, I find the following.

The tenancy ended January 31, 2020.

The Tenant's forwarding address was provided to the Landlord in writing and the Landlord received this May 06, 2020.

May 06, 2020 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from May 06, 2020 to repay the security deposit in full or file a claim with the RTB against the security deposit.

The Landlord did not repay the security deposit or file a claim with the RTB against the security deposit within 15 days of May 06, 2020. Therefore, the Landlord failed to comply with section 38(1) of the *Act*.

Sections 38(2) to 38(4) of the *Act* state:

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant...

The Tenant participated in a move-in and move-out inspection with the Landlord and therefore did not extinguish their rights in relation to the security deposit. Section 38(2) of the *Act* does not apply.

The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. Section 38(3) of the *Act* does not apply.

The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. Section 38(4) of the *Act* does not apply.

Given the above, I find the Landlord failed to comply with section 38(1) of the *Act* in relation to the security deposit and that none of the exceptions outlined in sections 38(2) to 38(4) of the *Act* apply. Therefore, the Landlord is not permitted to claim against the security deposit and must return double the security deposit to the Tenant pursuant to section 38(6) of the *Act*.

The Landlord must return \$1,200.00 to the Tenant. There is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

As the Tenant was successful in the Application, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to \$1,300.00 and I issue the Tenant a Monetary Order for this amount.

Conclusion

The Tenant is issued a Monetary Order for \$1,300.00. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with the Order, the 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 *Act*.

Dated: February 08, 2021

Residential Tenancy Branch