



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Imperial Tower CA Realty Ltd. (dba Creighton and Associates Realty) and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNSDS-DR, FFT**

Introduction

On November 19, 2020, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the tenant's application for dispute resolution for the following items to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

Paragraph 12 (1) (b) of the Residential Tenancy Regulations establishes that a tenancy agreement is required to "be signed and dated by both the landlord and the tenant." I find that the residential tenancy agreement submitted by the tenant is not signed by the landlord, which is a requirement of the Direct Request process, and that a participatory hearing is necessary to address this issue.

I have been delegated authority under the *Act* to consider the tenant's application for:

- A monetary order for a return of a security deposit by direct request, pursuant to sections 38 and 67; and
- Authorization to recover the filing fees from the landlord pursuant to section 72.

The landlord did not attend the hearing although I left the teleconference hearing connection open throughout this hearing that commenced at 1:30 p.m. and concluded at 1:45 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant attended the hearing and testified he sent the landlord the Notice of Dispute Resolution Proceedings by registered mail on November 21, 2020. It was sent to the address provided on the tenancy agreement and the tenant provided the tracking number for the mailing, noted on the cover page of this decision. I deem the Notice of

Dispute Resolution Proceedings served upon the landlord on November 26, 2020, five days after mailing in accordance with sections 89 and 90 of the Act.

Preliminary Issue

The landlord's name on the tenant's Application for Dispute Resolution does not match the landlord's name on the tenancy agreement. In accordance with section 64(3), the landlord's name was amended to reflect the name as it appears on the tenancy agreement. The landlord's name as it appears on the tenancy agreement is recorded on the cover page of this decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for a return of a security deposit?

Can the tenant recover the filing fee?

Background and Evidence

The tenant testified the landlord sent him an email on February 26, 2021. The email was read to me during the hearing. It states:

Just looking at the upcoming arbitration: anyway, we did not do our paperwork properly. Did not notice you objected to the liquidated damages until later. We could have claimed it in a proper way but we did not. We cannot defend the claim. I will prepare a full refund of your security deposit + 50.00 today if you agree. If yes, please confirm your address.

The tenant testified he did not agree to this offer.

In response to the adjudicator's concerns, the tenant provided the following testimony. He signed the tenancy agreement alone in the building manager's office. After the tenant signed it, the building manager provided him with a copy and kept the original. The person named as agent for the owner of the rental unit was not present when the tenant signed the tenancy agreement. The tenant is unaware of whether the landlord or the building manager ever signed the original tenancy agreement.

The tenant testified he paid \$1,625.00 in rent for August and September. A security deposit of \$812.50 was given to the landlord which the landlord continues to hold. The tenant ended the fixed term tenancy early on September 10, 2020, ending the tenancy on September 30, 2020. The parties signed a condition inspection report at the beginning and end of the tenancy and the tenant provided his forwarding address to the building manager on the condition inspection report on the last day of his tenancy. A further written notice of forwarding address was also given to the building manager on

September 30th. The tenant notes that he specifically did not agree to the landlord deducting the full amount of the security deposit as liquidated damages for ending the fixed term tenancy early.

The tenant submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the tenant on July 9, 2020, indicating a monthly rent of \$1,625.00 and a security deposit of \$812.50, for a tenancy commencing on August 1, 2020;
- A copy of a letter from the tenant to the landlord, providing the forwarding address;
- A copy of a Condition Inspection Report which was signed by the landlord and the tenant on September 30, 2020, indicating the tenant provided a forwarding address at the time of the move-out inspection; and
- A copy of a Tenant's Monetary Order Worksheet for an Expedited Return of Security Deposit and/or Pet Damage Deposit (the Monetary Order Worksheet). showing the amount of deposit paid by the tenant and indicating the tenancy ended on September 30, 2020.

Analysis

Section 62 of the *Act* states the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. I find that despite the tenancy agreement not being signed by the landlord in accordance with paragraph 12(1)(b) of the Regulations, the parties entered into a valid, binding tenancy agreement based on the tenant's testimony that he was paying monthly rent and paid a security deposit to the landlord.

Pursuant to section 44(1)(d), I find the tenancy ended on September 30, 2020 when the tenant vacated the rental unit. I find the tenant provided his forwarding address to the landlord on the same day when it was written on the condition inspection report and personally given to the building manager in written form.

Section 38(1) of the *Act* states the following:

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.

Pursuant to section 38(1), the landlord was required to return the tenant's full security deposit fifteen (15) days after September 30, 2020, namely October 15, 2020, or make an application for dispute resolution to claim against the security deposit, pursuant to Section 38(1). There is no evidence before me that the landlord returned any amount or made an Application to claim against the deposit. Therefore, I find the landlord has failed to comply with their obligations under Section 38(1).

Section 38(6) states:

- (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Since the landlord has failed to comply with the requirements set forth in Section 38(1) and as per Section 38(6)(b) I find the landlord must pay the tenants double the \$812.50 security deposit. The tenant is awarded a monetary amount of \$1,625.00.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I issue a monetary order in the tenant's favour in the amount of **\$1,725.00**.

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: March 08, 2021

Residential Tenancy Branch