



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order for the landlord to return the security deposit, under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:53 P.M. to enable the landlord to call into this teleconference hearing scheduled for 1:30 P.M. The landlord did not attend the hearing. 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.

I accept the tenant's testimony that the landlord was served with the application and evidence (the materials) by registered mail on December 09, 2020, in accordance with section 89(1)(c) of the Act (the tracking number is recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the landlord is deemed to have received the materials on December 14, 2020, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Issues to be Decided

Is the tenant entitled to:

1. an order for the landlord to return the security deposit?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained to the attending party it is the tenant's obligation to present the evidence, pursuant to Rule of Procedure 7.4.

The tenant stated the tenancy started on April 01, 2020 and ended on October 01, 2020. Monthly rent was \$600.00 due on the last day of the prior month. At the outset of the tenancy a security deposit of \$900.00 was collected and the landlord holds it in trust.

The tenant affirmed monthly rent was originally \$1,800.00 and the landlord agreed to reduce it to \$600.00 because the tenant's family could not move to Canada due to the pandemic.

The tenant served his forwarding address by registered mail on October 19, 2020 (the tracking number is recorded on the cover of this decision). A copy of the letter was submitted into evidence. This application was filed on November 24, 2020.

The tenant testified he did not authorize the landlord to retain the security deposit and he is not aware of any other application for dispute resolution. The tenant submitted into evidence text messages with the landlord on October 04, 2020:

Landlord: you told me this was going to be a few month arrangement then you would pay full rent. That didn't happen. **That's why I'd like to keep the deposit**

Tenant: **No...** I said till they come. Then covid happened [...]

Landlord: I do not know the situation that was why I was sympathetic to your situation.

Tenant: Thank you for the sympathy **but don't keep the deposit [...]**.

[...]

Landlord: **How much deposit did you pay?**

Tenant: **900**

(emphasis added)

Analysis

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.

Based on the tenant's testimony, I find the landlord has not brought an application for dispute resolution claiming against the security deposit pursuant to section 38(1)(d) of the Act.

I accept the undisputed testimony and documentary evidence that the tenancy ended on October 01, 2020, the tenant did not authorize the landlord to retain the security deposit and the landlord did not return the security deposit. Given the evidence of registered mail, the landlord is deemed to have received the forwarding address in writing on October 24, 2020, in accordance with section 90 (a) of the Act.

Pursuant to section 38 of the Act, the landlord must pay a monetary award equivalent to double the value of the security deposit:

- (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.

[...]

- 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.

Residential Tenancy Branch Policy Guideline 17 states:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;

Under these circumstances and in accordance with sections 38(6)(b) and 72 of the Act and Policy Guideline 17, I find that the tenant is entitled to a monetary award of \$1,800.00. Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit.

As the tenant's application is successful, I award the tenant the return of the filing fee.

In summary:

ITEM	AMOUNT \$
Section 38(6) - doubling of \$900.00 security deposit	1,800.00
Section 72 - Reimbursement of filing fee	100.00
TOTAL	1,900.00

Conclusion

Pursuant to sections 38(6)(b) and 72 of the Act, I grant the tenant a monetary order in the amount of \$1,900.00.

This order must be served on the landlord by the tenant. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) to be 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: March 19, 2021

Residential Tenancy Branch