



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an order for the return of double her security and pet damage deposits, plus recovery of the previous hearing's \$100.00 Application filing fee, and to recover the \$100.00 cost of her Application filing fee for this proceeding.

The Tenant, the Landlord, and an agent for the Landlord, S.P. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Landlord said that she received the Notice of Hearing, Application, and evidentiary submissions from the Tenant and had time to review these. However, the Tenant had refused to give the Landlord her forwarding address, as she said she relied on mail forwarding by Canada Post to allow mail to be sent to her new address. The Tenant said this prevented her from having to tell the Landlord where she was now living.

However, as I told the Parties in the hearing, I find that the Landlord could not know that the Tenant had forwarded her mail, and therefore, they relied on her email address for service of the Landlord's evidentiary submissions. The Landlord said that she served the Tenant with her evidence on February 18, 2021, via email at the address which the Tenant had said is her email address for receiving this Decision. However, the Tenant said that she had blocked the Landlord from sending emails, after the Landlord tried unsuccessfully to pay the Tenant her Deposits by e-transfer on January 10, 2021. The Tenant said the Landlord had also sent her threatening emails and texts, so she prevented them from continuing to do this. The Tenant said that the Landlord's emails

may have ended up in her spam folder, but that she did not recognize anything. The Landlord said she has sent the evidence to the Tenant from her personal email on February 18, 2021, and from her work email that same day. The Landlord said that she had confirmation from a “read receipt” that the emails were delivered to the Tenant.

The Landlord should have obtained an order for substituted service, which would have allowed her to serve the Tenant via email. As such, I find that the Tenant was not properly served by the Landlord, and therefore, I decline to consider the Landlord’s documentary submissions in my Decision.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Early in the hearing, I advised the Parties that pursuant to Rule 7.4, I would consider only their written or documentary submissions to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on June 1, 2019 and ran to May 31, 2020, with a monthly rent of \$1,750.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$875.00, and a pet damage deposit of \$400.00 (“Deposits”).

On November 10, 2020, another arbitrator determined that the Landlord must return the Tenant’s Deposits to her in the amount of \$1,275.00, in addition to the recovery of the application filing fee from that application (“November 10 Decision”). The arbitrator said the following in his decision:

I order the Landlord to return the security deposit, the pet damage deposit, and the cost of the filing fee, for a total amount of \$1,375.00, to the Tenant by

sending a payment via e-transfer to the Tenant's email address, as the Tenant originally requested. The return of the deposits must be completed within 15 days of the Landlord receiving this Decision. If the Landlord fails to return the deposits within 15 days, they may be at risk of owing double the amount of the deposits to the Tenant.

[emphasis added]

However, the Landlord appealed this decision to the RTB, which appeal was rejected on December 10, 2020.

In the hearing, the Tenant requested double the return of the Deposits, as well as reimbursement for the \$100.00 application filing fee from the November 3, 2020 Decision, as well as reimbursement for the Application filing fee for this proceeding.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

- 38** (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.

In the November 10 Decision, the Landlord analyzed the Tenant's eligibility to receive double the Deposits back, but the arbitrator determined that the Landlord had complied with section 38 of the Act, and therefore, that Tenant was not eligible for double the return of the security deposit.

While the other arbitrator said that the Landlord "may be at risk" of owing double the Deposits back, he did not cite a section of the Act that would authorize this doubling. I find that the provision for doubling a tenant's security and pet damage deposits in the Act specifically references a landlord not having complied with section 38 of the Act. However, the situation before me is not related to section 38(1) of the Act, and the Tenant did not refer me to another section of the Act or Regulation granting me the authority to double the return of the Deposits.

Accordingly, I grant the Tenant a Monetary Order, which will include \$1,375.00 for the other arbitrator's monetary award from the November 10 Decision, along with recovery of the filing fee from the current proceeding for a total Monetary Order of **\$1,475.00**, pursuant to section 67 of the Act.

Conclusion

The Tenant is partially successful in her Application for double the return of the security and pet damage deposits. However, the Tenant failed to provide a section of the Act or Regulation, which authorizes doubling the Deposits in this set of circumstances. As a result, the Tenant is granted a Monetary Order for the amount she was awarded in the November 10, 2020 decision, as well as \$100.00 for the Application filing fee for this Decision.

I grant the Tenant a Monetary Order under section 67 of the Act from the Landlord in the amount of. **\$1,475.00**.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 01, 2021

Residential Tenancy Branch