



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSDS-DR**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for monetary order for \$1,300 representing two times the amount of the security deposit, pursuant to sections 38 and 62 of the Act.

This hearing was reconvened from a hearing on December 11, 2020, which, in turn, was reconvened from an *ex parte* direct request proceeding on August 31, 2020. I issued an interim decision following the December hearing setting out the basis for the adjournment. I will not repeat the reasons for the adjournment in this decision.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:12 am in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 am. 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.

The tenant testified she served that the landlord with the notice of dispute resolution form, notice of reconvened hearing, and supporting evidence package via registered mail on December 16, 2020. The tenant provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the landlord is deemed served with this package on December 21, 2020, five days after the tenant mailed it, in accordance with sections 88, 89, and 90 of the Act.

Issues to be Decided

Is the tenant entitled to a monetary order of \$1,300?

Background and Evidence

While I have considered the documentary evidence and the testimony of the tenant, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The parties entered into a written tenancy agreement starting October 1, 2018. Monthly rent was \$1,300 and was payable on the first of each month. The tenant paid the landlord a security deposit of \$650. The landlord still retains this deposit. At the start of the tenancy, the tenancy had a co-tenant ("**JM**"), who subsequently moved out of the rental unit after two or three months, leaving the tenant as the sole tenant and occupant of the rental unit.

The tenant vacated the rental unit on August 1, 2020.

The tenant testified that no condition inspection was conducted at the start of the tenancy. She testified that she was willing to do one, but that the landlord never asked her to. She testified that the landlord failed to appear for the scheduled move-out condition inspection on August 1, 2020. She testified that he refused to reschedule it. She submitted the following Facebook message exchange between her and the landlord on August 1, 2020:

Tenant: I'm still here are you coming back?

Landlord: I'm definitely not

Tenant: I thought that you wanted a walk through prior to retuning my damage deposit

Landlord: Meh. Even if I did the walkthrough and explained that you have done any damages would you even agree to reduce damage [deposit]? Not likely. As state[d] prior you didn't get a walkthrough before moving in so one after moving out seems redundant.

The tenant provided her forwarding address to the landlord in a letter that she placed in his mailbox on August 6, 2020. Additionally, she provided it to him via Facebook messenger on July 31, 2020. She submitted a copy of the letter and the Facebook message into evidence.

The tenant testified that, to the best of her knowledge, the landlord has not applied to the Residential Tenancy Branch to keep the security deposit

Analysis

Section 38(1) of the Act states:

Return of security deposit and pet damage deposit

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.

Based on the testimony of the tenant, I find that the tenancy ended on August 1, 2020 and that the tenant provided her forwarding address in writing to the landlord on August 6, 2020.

The landlord has not returned the security deposit to the tenant within 15 days of receiving her forwarding address, or at all.

I find that the landlord has not made an application for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding address from the tenant, or at all.

Accordingly, I find that the landlord has failed to comply with his obligations under section 38(1) of the Act.

The tenant's right to the return of the security deposit has not been extinguished by either section 24 or 36 of the Act.

As such, section 38(6) of the Act applies. This section sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

- (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.

The language of section 38(6)(b) is mandatory. As the landlord has failed to comply with section 38(1), I must order that he pay the tenant double the amount of the security deposit (\$1,300).

Conclusion

Pursuant to section 65 of the Act, I order that the landlord pay the tenant \$1,300, representing an amount equal to two times the amount of the security deposit.

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 9, 2021

Residential Tenancy Branch