



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on November 23, 2020 (the “Application”). The Tenant applied for return of the security deposit. This was an adjourned direct request.

The Tenant appeared at the hearing with his wife S.C. to assist. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenant and S.C. I told the Tenant and S.C. they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant and S.C. provided affirmed testimony.

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package, direct request decision and Tenant’s evidence. S.C. testified that the hearing package, direct request decision and evidence were served by registered mail on December 24, 2020. S.C. testified that the package was sent to the Landlord’s residence and that the Landlord lived above the Tenant during the tenancy. The Tenant submitted the customer receipt for the package with Tracking Number 1 on it. I looked Tracking Number 1 up on the Canada Post website which shows the package was delivered January 07, 2021.

Based on the undisputed testimony of S.C., customer receipt and Canada Post website information, I am satisfied the hearing package, direct request 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 January 07, 2021. I am also satisfied based on the evidence that the Tenant complied with rule 3.1 of 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 and S.C. were 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 and S.C. I have only referred to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Tenant entitled to return of the security deposit?

Background and Evidence

Two written tenancy agreements were submitted as evidence. The first tenancy agreement was between the Landlord and S.C. The second tenancy agreement was between the Landlord and the Tenant. The tenancy started December 01, 2019. Rent was \$1,200.00 per month due on the first day of each month. The Tenant paid a \$600.00 security deposit. S.C. confirmed that the security deposit was carried over from the first tenancy agreement to the second tenancy agreement.

The Tenant testified that the tenancy ended September 30, 2020.

S.C. and the Tenant testified that the Tenant provided the Landlord with a forwarding address by registered mail on October 13, 2020.

S.C. testified as follows.

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 returned \$400.00 of the \$600.00 security deposit and the Tenant is seeking the remaining \$200.00 back.

The parties did move-in and move-out inspections.

The Tenant submitted the following relevant documentary evidence:

- A Notice of Departure dated October 12, 2020 with a forwarding address provided on it.
- A receipt with Tracking Number 2 on it showing the Notice of Departure was sent to the Landlord October 13, 2020. I looked Tracking Number 2 up on the Canada Post website which shows the package was delivered October 19, 2020.

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 S.C. and based on this, as well as the documentary evidence submitted, I find the following.

The tenancy ended September 30, 2020.

The Tenant's forwarding address was provided to the Landlord in writing and the Landlord received this October 19, 2020.

October 19, 2020 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from October 19, 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 in full or file a claim with the RTB against the security deposit within 15 days of October 19, 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 and therefore did not extinguish his 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. Pursuant to section 38(6) of the *Act*, the Landlord is not permitted to claim against the security deposit and would usually have to return double the security deposit to the Tenant. However, the Tenant is only seeking the remaining \$200.00 of the security back. The Tenant is entitled to this \$200.00 back pursuant to section 38(6) of the *Act*.

The Landlord must return \$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. I issue the Tenant a Monetary Order for \$200.00.

Conclusion

The Tenant is issued a Monetary Order for \$200.00. 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: May 05, 2021

Residential Tenancy Branch