



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSD**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67.

The tenant testified that the landlord was served via registered mail on January 29, 2021. In the hearing the tenant provided the Canada Post tracking number, which is located on the cover page of this decision. The Canada Post website states that the package was mailed on January 29, 2021 and was delivered on February 2, 2021. I find that the tenant's application for dispute resolution was served in accordance with section 89 of the *Act*.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:46 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. 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 was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The tenant testified that he is not recording this dispute resolution hearing.

The tenant confirmed his email addresses for service of this decision and order.

Preliminary Issue- Evidence

The tenant uploaded some evidence to the Residential Tenancy Branch Dispute Management system on May 17, 2021, the same day as this hearing.

Section 3.14 of the Residential Tenancy Branch Rules of Procedure (the “*Rules*”) states:

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

I find that the evidence uploaded on May 17, 2021 was not provided to the Residential Tenancy Branch in accordance with section 3.14 of the *Rules* and is therefore excluded from consideration.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?

Background and Evidence

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

The tenant provided the following undisputed testimony. This tenancy began on January 1, 2020 and ended on October 31, 2020. Monthly rent varied during this tenancy due to COVID-19. A security deposit of \$750.00 was paid by the tenant to the landlord. The parties had a previous hearing. The tenant provided the file number for the previous hearing which is located on the cover page of this decision. The previous file did not concern the tenant’s security deposit.

The tenant testified that on October 31, 2020 he left his keys and written forwarding address on the table of the subject rental property. A video of same was entered into evidence. The tenant testified that the landlord verbally confirmed receipt of his forwarding address. The tenant testified that on or around November 13, 2020 the landlord attended at the forwarding address to personally serve the tenant with a list of alleged damages to the subject rental property. The signed letter from the landlord alleging damages dated November 13, 2020 was entered into evidence.

The tenant testified that the landlord has not returned any portion of his security deposit.

The tenant testified that the landlord did not ask him to complete a move in or move out condition inspection report at the start or end of the tenancy. The tenant testified that he did not provide the landlord with written authorization to retain any portion of his deposit.

The tenant testified that the landlord has filed an application with the Residential Tenancy Branch for damages allegedly stemming from this tenancy. The tenant provided me with the file number for the landlord's application which is located on the cover page of this decision. The landlord's application will be heard on July 22, 2021. The landlord's application was completed on March 2, 2021 and seeks:

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The landlord's application does not seek authorization to retain the tenant's security deposit.

Analysis

Section 38 of the Act requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit.

However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has

previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

Based on the video entered into evidence and the tenant's undisputed testimony, I find that the tenant left his written forwarding address on the table of the subject rental property on October 31, 2020. I accept the tenant's undisputed testimony that the landlord verbally confirmed receipt of his forwarding address. I accept the tenant's undisputed testimony that the landlord personally served him at the forwarding address with the November 13, 2020 list of claims.

I find that while the tenant did not serve the landlord with the forwarding address in a manner approved under section 88 of the *Act*, the landlord was sufficiently served with the tenant's forwarding address, for the purposes of this *Act*, pursuant to section 71 of the *Act* because the landlord received the tenant's forwarding address. As stated above, the landlord's receipt of the forwarding address is evidenced by her verbal affirmation of same to the tenant and her use of the forwarding address to serve the tenant with a list of alleged damages. I find that the landlord was sufficiently served with the forwarding address by November 13, 2020, the date the landlord attended at the forwarding address to serve the tenant.

I accept the tenant's undisputed testimony that he did not provide the landlord with written authorization to retain any portion of his deposit. I find that the landlord has not filed an application with the Residential Tenancy Branch for authorization to retain any portion of the tenant's security deposit and has not returned any portion of the tenant's security deposit within 15 days of November 13, 2020. Pursuant to section 38(6) of the *Act*, I find that the tenant is entitled to a monetary award equivalent to double the amount of the security deposit (\$1,500.00).

Conclusion

I issue a Monetary Order to the tenant in the amount of \$1,500.00

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this 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 *Residential Tenancy Act*.

Dated: May 17, 2021

Residential Tenancy Branch