



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSDS-DR, FFT**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

On April 20, 2021, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the Act) adjourned the tenant's direct request application for the following items to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

Section 59 of the Act establishes that an Application for Dispute Resolution must "include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings."

Policy Guideline #49 on Tenant's Direct Request provides the following requirements: When making a request, an applicant must provide:

- *A copy of the signed tenancy agreement showing the initial amount of rent and the amount of security deposit and/or pet damage deposit required.*
- *If a pet damage deposit was accepted after the tenancy began, a receipt for the pet damage deposit.*
- *A copy of the forwarding address given to the landlord.*
- *A completed Proof of Service of Forwarding Address.*
- *A Tenant's Direct Request Worksheet.*
- *The date the tenancy ended.*

I find that the tenants have not submitted a copy of a written tenancy agreement, a Proof of Service of Forwarding Address form, or a Tenant's Direct Request Worksheet. I further find that I am not able to consider the

tenants' Application for Dispute Resolution without these documents which form a part of the Application, and that a participatory hearing is necessary.

I have been delegated authority under the *Act* to consider the tenant's application for:

- An order for the return of a security deposit or pet damage deposit pursuant to section 38; and
- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72.

The landlord did not attend the hearing although I left the teleconference hearing connection open throughout the hearing which commenced at 1:30 p.m. and concluded at 2:00 p.m. 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 RG and I were the only ones who had called into this teleconference.

The tenant RG testified that she served the landlord with the Notice of Dispute Resolution Proceedings Package and the adjudicator's order on April 24, 2021 and provided the tracking number for the mailing which is recorded on the cover page of this decision. The tenant testified the package was received by the landlord on April 29, 2021. I deem the landlord served with the Notice of Dispute Resolution Proceedings package on April 29, 2021 in accordance with sections 89 and 90 of the *Act*.

This hearing proceeded in the absence of the landlord in accordance with rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Should the tenant's security deposit be returned?

Can the tenant recover the filing fee?

Background and Evidence

The tenant gave the following undisputed testimony. The rental unit is the basement unit in the landlord's house. The suite is unauthorized, and the landlord did not provide a tenancy agreement for the tenants to sign at the commencement of the tenancy. The tenancy began on January 4, 2020 with rent set at \$1,400.00 per month payable anytime before the 10th day of each month. No formal written condition inspection report was done with the tenants at the commencement of the tenancy.

The landlord collected a security deposit of \$700.00 in cash from the tenants. The landlord did not provide the tenants with a receipt for the cash deposit because they were familiar with the landlord, having lived alongside him as a neighbour in the past.

The tenancy ended on December 31, 2020. The tenants ended the tenancy because the landlord tried to increase their rent during the period when rent increases were prohibited under the Ministerial Order 89/2020.

On January 7, 2021, the tenant sent the landlord their forwarding address in writing by registered mail. A copy of the letter was provided as evidence by the tenant. The tenant also supplied a copy of the tracking number for the mailing into evidence which is recorded on the cover page of this decision. The tenant testified that she and the other tenants have not had any contact with the landlord since moving out of the unit.

Analysis

The landlord did not attend the hearing to dispute any of the tenant's evidence or testimony. Based on the undisputed evidence before me, I am satisfied the tenants paid the security deposit in the amount of \$700.00 to the landlord at the commencement of the tenancy.

I am satisfied the tenant served the landlord with the forwarding address on January 12, 2021, five days after January 7, 2021, the day it was sent via registered mail in accordance with sections 88 and 90 of the *Act*. I note the tenancy ended on December 31, 2021.

Section 38(1) of the *Act* states the following:

- 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.

The landlord was required to either return the \$700.00 security deposit or make an application for dispute resolution to claim against the security deposit by January 27, 2020, fifteen (15) days after January 12th, pursuant to Section 38(1). The landlord has

provided no evidence that they have returned any amount or made an Application to claim against the deposit at all. Therefore, I find the landlord has failed to comply with their obligations under Section 38(1).

If the landlord does not comply with section 38(1) of the *Act*, section 38(6) of the *Act* applies:

- 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.

Section 38(6) requires that I double the tenant's \$700.00 security deposit to \$1,400.00. I award the tenant a monetary award in that amount in accordance with section 67 of the *Act*.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,500.00.

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 21, 2021

Residential Tenancy Branch