



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR

Introduction

This hearing dealt with the adjourned Direct Request Application filed by the Tenant under the *Residential Tenancy Act* (the “*Act*”). The Tenant applied for the return of their security deposit. The matter was set for a conference call.

The Tenant attended the hearing and was affirmed to be truthful in their testimony. As the Landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified the Direct Request Application was served to the Landlord by registered mail sent on January 27, 2021, a Canada post tracking numbers were provided as evidence of this service. The Tenant testified that the Notice of Hearing and Interim Decision had been served to the Landlord by registered mail sent on February 22, 2021; a Canada post tracking numbers were provided as evidence of service. I find that the Landlord had been duly served in accordance with sections 89 and 90 of the *Act*.

The Tenant was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The Landlord was advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matter – Jurisdiction

The original Direct Request Application had been adjourned due to a possible jurisdictional issue with the Tenant's application.

I have reviewed the Tenant's application and a decision dated October 7, 2020, that had been submitted into documentary evidence by the Tenant. This Decision was issued as a result of the Landlord's application, the same Landlord that is listed as the respondent to this application. In this decision, the arbitrator in those proceedings recorded the following:

“Jurisdictional issues were brought during this hearing. The Landlord testified that the Tenant rented a room in their home, that they also lived/stayed in. The Landlord testified that they stopped living/staying there as of mid December 2019 and had entered into a written tenancy agreement with the Tenant on January 9, 2020.”

[Reproduced as written]

I find that it has already been determined that a tenancy agreement existed between these parties that started on January 9, 2020, and therefore, the Residential Tenancy Branch does have jurisdiction over the Tenants Direct Request Application before me in these proceedings.

Issue to be Decided

- Is the Tenant entitled to the return of their security deposit?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Tenant testified that the tenancy began on January 9, 2020, that rent in the amount of \$1,550.00 was to be paid by the first day of each month and that the Tenant paid the Landlord a \$775.00 security deposit at the outset of this tenancy. The Tenant also

testified that their tenancy ended as of April 30, 2020. The Tenant submitted a copy of the tenancy agreement into documentary evidence.

The Tenant testified that they provided the Landlord with their forwarding address by serving the Landlord with the Residential Tenancy Branch forwarding address form sent by Canada Post Registered mail to the Landlord on December 11, 2020; a registered mail tracking number and copy of form #RTB-40 was submitted into documentary evidence by the Tenant.

The Tenant testified that the Landlord had filed for dispute resolution, requesting permission to keep their security deposit but that the Landlord's claim had been dismissed and they had been ordered to return the security deposit to the Tenant within 15-days of the date of the decision. The Tenant testified that this decision granted them permission to apply for the doubling of the security deposit if the Landlord did not comply as ordered. The Tenant submitted a copy of the decision issued on October 7, 2020, into documentary evidence.

The Tenant testified that as of the date of these proceedings, the Landlord had not returned their security deposit to them as ordered.

Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposits or repay the security deposit and pet damage deposit to the tenant.

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.

I accept the testimony of the Tenant and find that this tenancy ended on April 30, 2020, the date the Tenant moved out of the rental unit and that they provided their forward address to the Landlord by registered mail sent on December 11, 2020. Pursuant to section 90 of the *Act*, I find that the letter containing the Tenant's forwarding address was deemed received by the Landlord five days after it was mailed, on December 16, 2020.

Accordingly, the Landlord had until January 2, 2021, to comply with section 38(1) of the *Act* by either repaying the deposits in full to the Tenant or submitting an Application for Dispute resolution to claim against the deposits. The Landlord, in this case, did submit an Application for Dispute resolution to claim against the deposit for this tenancy on June 12, 2020.

The Hearing for the Landlord's application took place on October 5, 2020, and a final decision from those proceedings was issued on October 7, 2020. In that decision the arbitrator stated the following:

"As I have dismissed the Landlord claim, I order that the Landlord return the Tenant's security deposit to the Tenant, within 15 days of the date of this decision.

I grant the Tenant leave to apply for the return of double their security deposit if the Landlord fails to return the deposit as ordered."

[Reproduced as written]

At no time does a landlord have the right to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. It is not enough that the landlord thinks they are entitled to keep even a small portion of the deposit based on dismissed claims.

As the Landlord's Application for Dispute resolution claiming against the deposit for this tenancy had already been heard and dismissed before the date in which the Landlord was deemed to have received the Tenant's forwarding address, I find that the Landlord

had until January 2, 2021, to comply with section 38(1) of the *Act* by repaying the deposit in full to the Tenant. However, I accept the undisputed testimony of the Tenant, and find that the Landlord did not repay the deposit as required.

I find that the Landlord breached section 38 (1) of the *Act* by not returning the Tenant's deposit as ordered after their claim against the deposit had been dismissed.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return within the 15 days, the landlord must pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

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.

Therefore, I find that pursuant to section 38(6) of the *Act*, the Tenant has successfully proven that they are entitled to the return of double their security deposit. I find for the Tenant, in the amount of \$1,550.00, granting a monetary order for the return of double the security deposit for this tenancy.

Conclusion

I find that the Landlord breached section 38 of the *Act* and an order of the Residential Tenancy Branch when they failed to repay the security deposit to the Tenant.

I find for the Tenant pursuant to sections 38 of the *Act*. I grant the Tenant a **Monetary Order** in the amount of **\$1,550.00**. 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: June 11, 2021

Residential Tenancy Branch