



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for the return of her \$400.00 security deposit that she says the Landlord is holding without cause; and to recover the \$100.00 cost of her Application filing fee.

The Tenant appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over ten minutes and was monitored throughout this time. The only person to call into the hearing was the Tenant, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Tenant.

I explained the hearing process to the Tenant and gave her an opportunity to ask questions about the hearing process. During the hearing the Tenant was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that he served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on January 20, 2021. The Tenant provided a Canada Post tracking number as evidence of service. I find that the Landlord was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenant in the absence of the Landlord.

Preliminary and Procedural Matters

The Tenant provided her email address in the Application and she gave me the Landlord's email address in the hearing. The Tenant confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Tenant that she is not allowed to record the hearing, and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Tenant said that she never signed a lease, and that the tenancy confirmation form is all there is. She said that the tenancy started on July 1, 2020, with a monthly rent of \$800.00, due on the first day of each month. The Tenant said she paid the Landlord a security deposit of \$400.00, and no pet damage deposit. The Tenant submitted a "Confirmation of Tenancy" letter dated August 18, 2020, in which the Landlord confirms she is the Landlord of the property that the Tenant inhabits. The Landlord also confirmed that the Tenant pays \$800.00 in rent.

The Tenant said that the tenancy ended on November 20, 2020, because she wanted to move to a better living environment. The Tenant said that she gave the Landlord her forwarding address and requested the security deposit back in a letter dated December 14, 2020. She said she also gave the Landlord her forwarding address and asked for the security deposit back in two emails. The Tenant submitted a copy of the letter she sent to the Landlord on December 14, 2020. In this letter, the Tenant said:

I am writing you to formally request my security deposit of \$400. I moved out of your property on November 30, 2020, which makes it 2 weeks overdue.

My forwarding address is [address]. You may also send it to me via e-transfer using my email address [two email addresses provided] and phone number [phone number].

I asked the Tenant if she received any response from the Landlord, and she said:

Not in writing. In January, she messaged me letting me know that she didn't intend to hold it for so long. It was a long-winded message, to which I didn't respond. She sent the money by etransfer, but not the password to get it into my bank. I just didn't bother contacting her, because I thought that she was aware. I thought this, because this was before the first decision when I tried to get it back, I kept sending – I sent another package of when the trial would be, and she still did not reach out to me or anything.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

The Tenant provided her forwarding address to the Landlord in writing on December 14, 2020. Pursuant to section 90 of the Act, this was deemed delivered to the Landlord five days later, or on December 19, 2020. The tenancy ended on November 30, 2020.

Section 38(1) of the Act states the following about the connection between these dates:

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 return the \$400.00 security deposit within fifteen days after December 19, 2020, namely by January 3, 2021, or to apply for dispute resolution to claim against the security deposit, pursuant to section 38(1). The Landlord has provided no evidence that she returned any amount or applied to the RTB to claim

against the deposit. Therefore, I find the Landlord failed to comply with her obligations under section 38(1).

Since the Landlord has failed to comply with the requirements of section 38(1), and pursuant to section 38(6)(b) of the Act, I find the Landlord must pay the Tenant double the amount of the security deposit. There is no interest payable on the security deposit.

I award the Tenant with \$800.00 from the Landlord pursuant to sections 38 and 67 of the Act. Given her success in this Application, I also award her recovery of the \$100.00 Application filing fee, pursuant to section 72 of the Act.

I grant the Tenant a Monetary Order from the Landlord of **\$900.00**, pursuant to section 67 of the Act

Conclusion

The Tenant is successful in her Application, as she provided sufficient evidence to prove on a balance of probabilities that the Landlord has failed to return her \$400.00 security deposit. Given that the Landlord has failed to comply with section 38 of the Act by not returning the security deposit to the Tenant, and pursuant to section 38(6) of the Act, the Tenant is eligible to receive double the amount of the security deposit back, and she is awarded \$800.00 in this regard. The Tenant is also awarded recovery of the \$100.00 Application filing fee.

I grant the Tenant a Monetary Order of **\$900.00** from the Landlord. This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) 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 16, 2021

Residential Tenancy Branch