



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRAFT PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDS-DR

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied for the return of double their security deposit through the Direct Request process. On February 25, 2021, an Arbitrator wrote an Interim Decision, adjourning this matter to a participatory hearing due to issues with the Direct Request application. The February 25, 2021 Interim Decision should be read in conjunction with this decision.

On July 8, 2021, the participatory hearing was held, and the tenant attended the teleconference hearing and was affirmed. The hearing process was explained to the tenant and an opportunity to ask questions was provided. During the hearing the tenant was provided affirmed testimony and their documentary evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the landlord did not attend the hearing, service of the Notice of Adjourned Hearing, application and documentary evidence was considered. The tenant testified that the Notice of Adjourned Hearing, application and documentary evidence package was sent by registered mail to the landlord at the landlord's address on February 26, 2021, which is supported by the photo evidence before me. The tenant also confirmed that the package was returned to them and marked "unclaimed". Based on section 90 of the Act, documents served by registered mail are deemed served 5 days after they are mailed. As a result, I find the landlord was deemed served as of March 3, 2021.

I also consider this matter to be unopposed by the landlord as I find the landlord was sufficiently served under the Act and did not attend the hearing. The hearing proceeded

without the landlord present pursuant to Residential Tenancy Branch (RTB) Rules of Procedure (Rules) 7.1 and 7.3.

Preliminary and Procedural Matters

The tenant was informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rule 6.11. The tenant was also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the tenant was informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The tenant did not have any questions about my direction pursuant to Rule 6.11.

In addition, the tenant confirmed the respective email addresses for both parties at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to the tenants and that the decision would be emailed to the landlord.

Issue to be Decided

- Is the tenant entitled to the return of double their security deposit under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on April 1, 2020 and was not scheduled to revert to a month to month tenancy until March 31, 2022. Monthly rent was \$900.00 per month and was due on the first day of each month. The tenant stated that they paid a security deposit of \$450.00 at the start of the tenancy, which the landlord continues to hold.

The tenant testified that their niece, CK (agent) was with the landlord agent and provided the tenant's written forwarding address as agent on the outgoing Condition Inspection Report (CIR) dated July 1, 2020. The tenant stated that they had to vacate as the rental unit was advertised as non-smoking and their neighbour smoked on their balcony cause health issues for the tenant. The tenant stated that the \$450.00 security deposit has not been returned by the landlord and that the tenant has not been served with any application by the landlord claiming against the security deposit.

The tenant is seeking \$900.00 as double the \$450.00 security deposit. As the filing fee was waived, I will not be considering the filing fee further.

Analysis

Based on the undisputed documentary evidence presented and the undisputed testimony before me, and on the balance of probabilities, I find the following.

Sections 38(1) and 38(6) of the Act apply and state:

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.

(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.

[emphasis added]

I accept the undisputed evidence from the tenant that the landlord has returned \$0.00 of the tenant's \$450.00 security deposit. I find the tenant provided their written forwarding address via their agent, CK, on the outgoing CIR dated July 1, 2021. As a result, I find the landlord had 15 days from July 1, 2021 to either return the \$450.00 security deposit in full or make a claim against the security deposit, as there is no evidence before me that the landlord had written permission to keep any portion of the security deposit.

Therefore, I find the landlord breached section 38(1) of the Act and I find the tenant is entitled to the return of **double** their \$450.00 security deposit for a total of **\$900.00**. I

note that the security deposit has accrued \$0.00 in interest since the start of the tenancy. I find the tenant has met the burden of proof based on the above.

Monetary Order – I find that the tenant has established a total monetary claim in the amount of **\$900.00**. As a result, I grant the tenant a monetary order pursuant to section 67 of the Act in the amount of \$900.00.

I caution the landlord not to breach section 38(1) of Act in the future.

Conclusion

The tenant's application is fully successful.

The tenant has established a total monetary claim of \$900.00 as indicated above.

The landlord has been cautioned to comply with section 38(1) of the Act in the future.

This decision will be emailed to both parties. The monetary order will be emailed to the tenant only for service on the landlord. Should the tenant require enforcement of this order, this order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The landlord is cautioned that they could be held liable for all costs associated with enforcing the monetary order.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 14, 2021

Residential Tenancy Branch