



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an adjourned *ex-parte* application regarding the above-noted tenancy. The tenant applied for:

- an order for the landlord to return the security deposit (the deposit), pursuant to section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:54 P.M. to enable the respondent to call into this teleconference hearing scheduled for 1:30 P.M. The respondent did not attend the hearing. 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.

At the outset of the hearing the attending party affirmed she understands it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

I accept the tenant's testimony that the respondent was served with the application, the interim decision and evidence (the materials) by registered mail on March 16, 2021, in accordance with section 89(1)(c) of the Act (the tracking number is recorded on the cover page of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the respondent is deemed to have received the materials on March 21, 2021, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Issues to be Decided

Is the tenant entitled to:

1. an order for the respondent to return the deposit?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the tenant's obligation to present the evidence to substantiate the application.

The tenant affirmed the tenancy started on March 24, 2011 and ended on September 30, 2020. Monthly rent was \$1,200.00, due on the first Friday of the month. At the outset of the tenancy a security deposit of \$450.00 was collected and the respondent holds it in trust. The tenancy agreement was submitted into evidence. It indicates the landlord is PA and the rental unit's address does not contain the unit designation informed by the tenant in this application.

The tenant affirmed PA sold the rental unit to the current landlord (the respondent), in June or July 2017. The tenant confirmed receipt of a letter served by PA indicating the respondent holds the deposit. The tenant paid rent to the respondent since June or July 2017.

The tenant affirmed that during the tenancy the landlord corrected the rental unit's address to include the unit designation because there is a second rental unit on the property.

The tenant served the forwarding address in writing on October 13, 2020. The tenant submitted into evidence a tenant's notice of forwarding address (RTB form 47) and the

proof of service (RTB form 41). The proof of service indicates the tenant served the respondent her forwarding address in person on October 13, 2020.

This application was filed on February 12, 2021. The tenant did not authorize the respondent to retain the deposit.

The tenant submitted into evidence a direct request worksheet requesting the payment of \$900.00 (double the deposit).

Analysis

Based on the tenant's undisputed testimony and the tenant's notice of forwarding address, I find the tenant served the respondent her forwarding address in writing on October 13, 2020 and the tenant did not authorize the respondent to withhold the deposit. The respondent has not brought an application for dispute resolution claiming against the deposit and did not return the deposit.

Section 38(1) of the Act requires the landlord to either return the tenant's deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. Pursuant to section 38(6) of the Act, the landlord must pay a monetary award equivalent to double the value of the deposit:

(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.

Residential Tenancy Branch Policy Guideline 17 is clear that the arbitrator will double the value of the deposit when the landlord has not complied with the 15 day deadline; it states:

B. 10. The landlord has 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 return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.

[...]

11. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

[...]

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;

- if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenant is entitled to a monetary award of \$900.00 (\$450.00 x 2).

Over the period of this tenancy, no interest is payable on the respondent's retention of the deposit.

I note that when a landlord purchases a rental unit, the landlord inherits the tenant and cannot avoid the obligations under the tenancy agreement signed by the first landlord.

As the tenant was successful in this application, I find the tenant is entitled to recover the \$100.00 filing fee.

In summary, the tenant is entitled to \$1,000.00.

Conclusion

Pursuant to sections 38 and 72 of the Act, I grant the tenant a monetary order in the amount of \$1,000.00. This order must be served on the respondent by the tenant. If the respondent fails to comply with this order, the tenant may file the order in the Provincial Court (Small Claims) to be 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: July 28, 2021

Residential Tenancy Branch