



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

The tenants filed an Application for Dispute Resolution (the “Application”) on March 24, 2021 seeking an Order granting a refund of the security deposit, as well as a recovery of the filing fee for the hearing process.

This participatory hearing was convened after an agent of this office determined the correct information regarding the tenant’s proof of their address service was not in place to proceed by a direct request proceeding. The agent informed the tenant of this on April 14, 2021. This generated a Notice of Hearing sent to the Applicant tenant.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the *Act*) on September 7, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The tenant attended the hearing, and they were provided the opportunity to present oral testimony and make submissions during the hearing. The landlord did not attend the telephone conference call hearing.

To proceed with this hearing, I must be satisfied that the tenant made reasonable attempts to serve the landlord with the Notice of Dispute Resolution for this hearing. This means the tenant must provide proof that the document has been served at a verified address allowed under s. 89 of the *Act*, and I must accept that evidence.

The tenant set out how they served this notice to the landlord via registered mail on April 16, 2021. They presented the following evidence to show this: a print of Canada Post registered mail receipt from April 16; an image of the postage stamp showing April 16; and an image of the registered mailing decal to the landlord’s address. The tenant

stated that the package they sent included all the evidence they intended to rely on for this hearing.

Based on the submissions of the tenant, I accept the landlord was served notice of this hearing and the tenant's application in a manner complying with s. 89(1)(c) of the *Act*. The hearing thus proceeded in the landlord's absence.

Issue(s) to be Decided

Is the tenant entitled to an Order granting a refund of the security deposit pursuant to s. 38(1)(c) of the *Act*?

Is the tenant entitled to recover the filing fee for this application pursuant to s. 72 of the *Act*?

Background and Evidence

The tenant submitted a copy of the tenancy agreement for this hearing. Both parties signed the agreement prior to the start of the tenancy on January 11, 2019. The rent was \$2,450 per month; in February 2020 this increased to \$2,500. The tenant provided a \$1,225 security deposit; in the hearing the tenant provided they paid this in January 2019 via credit card.

The tenancy ended on July 31, 2020. This was the tenant's move-out date. On this initial application, the tenant indicated they did participate in a condition inspection; however, they did not have a copy of that meeting report because they never requested one from the landlord.

The landlord provided the security deposit amount to the tenant on January 3, 2021 by cheque. The tenant included in their evidence an image of the cheque, and a bank record indicating the cheque was returned because of insufficient funds. The date of that return was January 12, 2021. This cheque bears the name and postal address of the landlord, as well as the signature of the landlord's agent.

The tenant's testimony is that after this they tried to contact the landlord to no avail. They postulated the landlord was blocking their calls and not answering direct line calls; this was verified when they used an alternate line to contact the landlord who then answered. According to the tenant the landlord instructed them to not contact via an

alternate line. This ended all communication with the landlord, and the issue of the non-funded cheque was not resolved.

In February, the tenant followed up with a registered letter to the landlord advising of their address. The landlord testified they then sent the specific form by Residential Tenancy Branch for this purpose on March 24, 2021 via registered mail.

The landlord did not attend the hearing and provided no evidence in response to the tenant's claim.

Analysis

The *Act* s. 38(1) states that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must repay any security or pet damage deposit to the tenant or make an Application for Dispute Resolution for a claim against any deposit.

Further, s. 38(6) of the *Act* provides that if a landlord does not comply with subsection (1), a landlord must pay the tenant double the amount of the security and pet damage deposit.

From the evidence I find as fact that the tenant provided their forwarding address to the landlord. The evidence for this is the single document, in a form provided by the Residential Tenancy Branch, for this purpose. The landlord did not attend the hearing to provide any evidence to the contrary.

I find the evidence shows the landlord received the tenant's forwarding address information in March 2021 and did not subsequently make a claim against the deposit within the legislated timeframe of 15 days. Although the landlord provided a cheque payment for the security deposit amount, I find the evidence shows this cheque was non-funded; therefore, the deposit was not returned to the tenant at any time previously. I accept the tenant's evidence that they made attempts to contact the landlord on this discrete point with no resolution of that cheque amount.

I find the landlord did not return the deposit to the tenants as the *Act* requires. This constitutes a breach of s. 38(1); therefore, s. 38(6) applies, and the landlord must pay double the amount of the security deposit. This is \$2,450.

As the tenant was successful in this application, I find the tenant is entitled to recover the \$100 filing fee they paid for this application.

Conclusion

I order the landlord to pay the tenant the amount of \$2,550. This is double the security deposit amount total of \$1,225. This includes the amount of \$100.00 for the application filing fee. I grant the tenant a monetary order for this amount. The tenant may file this monetary order in the Provincial Court (Small Claims) and where it may 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 s. 9.1(1) of the *Act*.

Dated: September 7, 2021

Residential Tenancy Branch