



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on March 25, 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 basic information regarding the tenancy was not in place to proceed by a direct request proceeding. The agent informed the tenant of this on April 21, 2021. This generated a Notice of Hearing sent to the Applicant tenant.

The tenant attended the hearing; the landlord did not.

The tenant stated they delivered notice of this hearing to the landlord by registered mail. They provided a Canada Post tracking number and print record showing they sent the mail on April 23, 2021. They also notified the landlord via text message to the landlord’s phone, a chat app, and an email to a family member of the landlord.

From what the tenant presents here on notifying the landlord of this hearing, I am satisfied they served the landlord notice of this hearing, and their evidence, in a manner prescribed by s. 89(1)(c) of the *Act*. I consider the document received by the tenant on April 28, 2021, as per s. 90(a) of the *Act*.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the *Act*) on October 14, 2021. In the conference call hearing I explained the process and provided the tenant the opportunity to ask questions.

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

There is no documented tenancy agreement; however, the tenant gave testimony on the start of the tenancy, and the basic terms agreed to by the parties. The agreement began with the tenant's payment of \$600 to the landlord on January 20, 2021. The landlord upon receiving this said they would provide a copy of the tenancy agreement to the tenant, and this did not happen. The rent was set at \$1,200, to start in mid-March. The tenant agreed via text messages with the landlord. The tenant's previous landlord required advance one-month notice for them to end that other tenancy, so the tenant made the agreement with the landlord here.

By the following day, the tenant decided they could not rent this place. This was based on their employment situation where they had to return to a different locale in Canada. With the current public health measures in place, the tenant felt it was better to be at their home locale, so there was no tenancy going forward.

The tenant gave the landlord this information on January 21. There were text messages with no return, and then the landlord replied to say: "You've already paid the deposit." The tenant provided an image showing the paid deposit transfer on January 21, 2021 – this is completion of the transfer by the landlord. The tenant tried to cancel this transfer, but was not able to, even after a call to the bank.

The tenant's record also shows how they provided their forwarding address to the landlord, for the return of the deposit they paid. This is a letter dated January 22, 2021, wherein the tenant provided their address. The tenant provided information on s. 38 of the *Act*, and set out their account of the start of tenancy. The tenant provided a Proof of Service document that sets out they provided this letter to the landlord via registered mail on January 22, 2021.

The tenant also emailed to the landlord on January 26, 2021. This re-states their request for the return of the security deposit.

Analysis

The *Act* s. 1 defines a “tenancy agreement” as “an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit. . .” Also, “security deposit” is defined as “money paid . . . by . . . a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property . . .”

The *Residential Tenancy Regulation* sets out limits on refundable or non-refundable fees charged by a landlord.

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.

I find the \$600 transferred by the tenant to the landlord is a security deposit, in line with the oral tenancy agreement that was in place between the parties. There is no evidence to suggest it is a refundable or non-refundable fee charged by the landlord.

I find as fact the tenant advised the landlord of termination of the pending tenancy on January 21, 2021. This was in advance of the landlord accepting the security deposit, and prior to the transfer of the \$600 security deposit. The tenant was not able to halt the bank transaction.

From the evidence I can establish as fact that the tenant provided their forwarding address to the landlords on January 22, 2021. For the service of this document, I deem the landlord was served via registered mail on January 27, 2021.

I find the tenant ended the tenancy on January 21, 2021 when they advised the landlord of this. Occurring after this was the tenant providing their forwarding address on January 22, received by the landlord on January 27. With regard to section 38(1), this is the later catalyst, that being “the date the landlord receives the tenant’s forwarding address in writing.” The landlord had fifteen days from this later date to make a claim against the security deposit.

In this hearing, there is no evidence the landlord made an application for dispute resolution claiming against the security deposit. Therefore, the landlord retaining the security deposit is not in line with the provisions of the *Act*. In either scenario above, the landlord was bound by the provisions of section 38(1).

I find the evidence shows the landlords received the tenant's forwarding address information on January 27, 2021 and did not subsequently make a claim to retain the deposit within the legislated timeframe of 15 days. In sum, I find the landlords retained the deposit after the tenancy ended. When provided with the tenant's address information, the landlords had the opportunity to register a claim to retain that deposit; however, there is no record that they did so.

I find the landlord did not return the deposit to the tenant as the *Act* requires. This constitutes a breach of section 38(1); therefore, section 38(6) applies, and the landlords must pay double the amount of the security deposit. This is \$1,200.

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

Conclusion

I order the landlord to pay the tenant the amount of \$1,300.00. I grant the tenant a monetary order for this amount. This monetary order 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 s. 9.1(1) of the *Act*.

Dated: October 21, 2021

Residential Tenancy Branch