



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, MNDCT

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
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, pursuant to section 67.

I left the teleconference connection open until 1:52 P.M. to enable the landlord to call into this teleconference hearing scheduled for 1:30 P.M. The landlord 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 he 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."

The Notice of dispute resolution proceeding is dated May 20, 2021, the Notice of hearing is dated June 04, 2021 and the amendment is dated October 15, 2021. The tenant affirmed he served the Notice of dispute resolution proceeding and the evidence on May 21, 2021, the Notice of hearing and the interim decision on June 06, 2021 and the amendment on October 15, 2021 by registered mail to the landlord's address. The tracking numbers are 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 landlord is deemed to have received the Notice of dispute resolution proceeding and the evidence on May 26, 2021, the Notice of hearing and the interim decision on June 11, 2021 and the amendment on October 20, 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.

Preliminary Issue – Partial Withdrawal of the Application

At the outset of the hearing the tenant advised he is only seeking an order for the landlord to return the deposit.

Therefore, pursuant to my authority under section 64(3)(c) of the Act, I amended the tenant's application to withdraw the claim for a monetary order for compensation for damage or loss.

Issue to be Decided

Is the tenant entitled to an order for the return of the deposit?

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 claim 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 December 01, 2019 and ended on January 01, 2021. Monthly rent was \$1,450.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$725.00 was collected and the landlord holds it in trust.

The tenant's direct request worksheet (RTB form 40) indicates the tenant paid a security deposit in the amount of \$725.00 on December 03, 2019 and the landlord did not return it.

The tenant served the forwarding address by registered mail on January 27, 2021 (the tracking number is on the cover page of this decision). The tenant submitted into evidence a copy of the January 27, 2021 letter:

Attention [landlord]:

[Tenant] has ended his tenancy at [rental unit's address] as of Dec 31 2020.

Withstanding damage deposit \$725.00

Forwarding address [redacted for privacy]

The tenant submitted into evidence a tenant's notice of forwarding address (RTB form 47) indicating the tenant served the landlord his forwarding address by registered mail.

The tenant did not authorize the landlord to retain the deposit. The tenant submitted this application on May 10, 2021.

Analysis

Based on the tenant's undisputed testimony, the tenant's notice of forwarding address (RTB form 47), the January 27, 2021 letter and the registered mail tracking numbers, I find the tenant served the landlord his forwarding address in writing on January 27, 2021 and did not authorize the landlord to withhold the deposit.

Per section 90 (a) of the Act, the landlord is deemed served the forwarding address on February 01, 2021.

The landlord has not brought an application for dispute resolution claiming against the deposit and did not return it.

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 \$1,450.00 (\$725.00 x 2).

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

Conclusion

Pursuant to section 38 of the Act, I grant the tenant a monetary order in the amount of \$1,450.00. This order must be served on the landlord by the tenant. If the landlord 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: November 23, 2021

Residential Tenancy Branch