



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to obtain a return of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:52 pm in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 pm. 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.

The tenant testified she served that the landlord with the notice of dispute resolution package and supporting evidence via registered mail on June 11, 2021. She provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the landlord was deemed served with this package on June 16, 2021, five days after the tenant mailed it, in accordance with sections 88, 89, and 90 of the Act.

On the notice of dispute resolution hearing proceeding form, and at the hearing, the tenant indicated that she was seeking a monetary amount equal to double the security deposit, if eligible.

Rule of Procedure 4.2 states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find that an amendment to the tenant's application increase the amount of her monetary claim from \$600 to \$1,200 could reasonably have been anticipated by the landlord, in light of the fact it was explicitly mentioned in the description of the tenant's claim for the return of the security deposit. Therefore, pursuant to Rule 4.2, I order that the tenant's application amended to increase the amount of her monetary claim to \$1,200.

Issues to be Decided

Is the tenant entitled to:

- 1) a monetary order of \$1,200, representing the return of double the security deposit; and
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the tenant, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The parties entered into a tenancy agreement starting February 1, 2015. Monthly rent was \$1,200 and was payable on the first of each month. The rental unit is a basement suite of a single detached house. During the tenancy, the landlord lived in the upper unit. The tenant paid the landlord a security deposit of \$600, which the landlord has not yet returned to the tenant. The tenancy ended on May 31, 2019, pursuant to an order of possession issued by another arbitrator of the Residential Tenancy Branch (the "RTB"). I have reviewed this prior decision (file number on the cover of this decision) and confirm that it makes no reference as to the landlord's right to retain the security deposit.

The tenant testified that the landlord did not complete a move-in condition inspection report at the start of the tenancy.

The tenant testified that she provided the landlord with her forwarding address, in writing, on June 6, 2019, by leaving a copy of it with the keys to the rental unit in the landlord's mailbox, by leaving a copy of it in the rental unit, and by posting a copy of it to the front door of the landlord's residence. The landlord never returned the security deposit to her, nor did he make an application with the RTB to retain the security deposit.

The tenant made this application on May 27, 2021, less than two years after the end of the tenancy.

Analysis

Section 38(1) of the Act states:

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.

Based on the testimony of the tenant, I find that the tenancy ended on May 31, 2021 and that the tenant provided her forwarding address in writing to the landlord on June 6, 2021.

The landlord has not returned the security deposit to the tenant within 15 days of receiving her forwarding address, or at all.

I find that the landlord has not made an application for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding address from the tenant, or at all.

Accordingly, I find that the landlord has failed to comply with his obligations under section 38(1) of the Act.

The tenant's right to the return of the security deposit has not been extinguished by either section 24 or 36 of the Act.

As such, section 38(6) of the Act applies. This section sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

- (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.

The language of section 38(6)(b) is mandatory. As the landlord has failed to comply with section 38(1), I must order that he pay the tenant double the amount of the security deposit (\$1,200).

Pursuant to section 72(1) of the Act, as the tenant has been successful in the application, she may recover the filing fee from the landlord.

Conclusion

Pursuant to sections 65 and 72 of the Act, I order that the landlord pay the tenant \$1,300, representing an amount equal to two times the amount of the security deposit, plus the reimbursement of the filing fee.

The tenant must serve this decision and attached order on the landlord as soon as reasonably possible after receiving copies of them from the Residential Tenancy Branch.

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 26, 2021

Residential Tenancy Branch