



Dispute Resolution Services

Page: 1

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 June 6, 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 tenancy was not in place to proceed by a direct request proceeding. The agent informed the Tenant of this in the decision dated July 5, 2021. This generated a Notice of Hearing sent to the Applicant Tenant.

The Tenant stated they delivered notice of this hearing to the Landlord via registered mail. They provided a Canada Post tracking number to show they sent the mail on July 7, 2021. The record shows the Landlord did not accept the registered mail and the package was returned to the Tenant.

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 Landlord on July 12, 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 January 4, 2022. In the conference call hearing I explained the process and provided the Tenant the opportunity to ask questions.

Issues to be Decided

Is the Tenant entitled to an Order granting a refund of the amount of the security deposit pursuant to section 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 provided a copy of the agreement. They signed this agreement with the Landlord on August 10, 2019 for the tenancy starting on September 1. The rent amount was \$1,500 payable on the first of each month. The Tenant paid a security deposit of \$750 on the day of signing.

The tenancy ended on November 29, 2020. In the hearing the Tenant described how they attempted to give the Landlord their forwarding address at that time; however, the Landlord refused to accept that document from the Tenant.

After this, the Tenant provided a specific form for the purpose of giving a forwarding address to the Landlord. This is in the Tenant's evidence, dated April 20, 2021. This gives a postal box forwarding address. They provided this to the Landlord via registered mail on April 21, 2021, and a record of that tracking number shows completion of the delivering on April 24, 2021. The form on page 2 gives specific information to the Landlord about the 15-day timeline for the Landlord to claim against the deposit for any money owing,

Analysis

From the Tenant's evidence, I am satisfied they were the Tenant in the tenancy agreement they had with the 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) provides that if a Landlord does not comply with subsection (1), a landlord must pay a tenant double the amount of the security deposit and pet damage deposit.

I find the \$750 paid by the Tenant at the start of the tenancy agreement is a security deposit. I find as fact the Tenant advised the Landlord of their forwarding address, with the evidence showing service to the Landlord of that information on April 24, 2021. With registered mail, the deemed service date is April 26, 2021. With regard to s. 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 deposit. Therefore, the Landlord retaining the security deposit is not in line with the provisions of the *Act*.

The Landlord is bound by the provisions of the *Act*. I find the evidence shows the Landlord received the Tenant's forwarding address information by April 26, 2021 and did not make a claim to retain the deposit within the legislated timeframe of 15 days. In sum, I find the Landlord retained the deposit after the tenancy ended. When provided the Tenant's address information, the Landlord had the opportunity to register a claim; 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 s. 38(1); therefore, s. 38(6) applies, and the Landlord must pay double the amount of the security deposit. This is \$1,500.

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 \$1,600. 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: January 4, 2022

Residential Tenancy Branch