



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL-S, FFL**

MNSDB-DR

Introduction

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- An order to be compensated for a monetary loss or other money owed and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant applied for:

- A monetary order for the return of a security deposit and pet damage deposit that the landlord is holding without cause, pursuant to sections 38 and 67.

The tenant attended at the date and time set for the hearing of this matter. The landlord did not attend this hearing, although I left the teleconference hearing connection open until 2:00 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

As only the tenant attended the hearing, I asked the tenant to confirm that she had served the landlord with the Notice of Dispute Resolution Proceeding for this hearing. The tenant testified that she had served the landlord with the notice of this hearing and her evidence by Canada Post registered mail on August 16, 2021, and referred to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I have noted the registered mail tracking number on the cover sheet of this decision. In accordance with sections 88 and 89 of the *Act*, I find that the landlord sufficiently served with the documents for this hearing five days after it was sent by registered mail, or August 21, 2021.

The tenant testified that the landlord never served her with his application for dispute resolution. The only reason the tenant knew about the landlord's application was because an information officer of the Residential Tenancy Branch advised her of it when she called to inquire about her own file.

Preliminary Issue

The Residential Tenancy Branch Rules of Procedure state:

3.5 Proof of service required at the dispute resolution hearing

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Further, Residential Tenancy Branch Policy Guideline PG-12 [Service Provisions] states:

All parties named on an application for dispute resolution must be served notice of proceedings, including any supporting documents submitted with the application. Where more than one party is named on an application for dispute resolution, each party must be served separately. Failure to serve documents in a way recognized by the Legislation may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.

The landlord did not attend the hearing to demonstrate to me that he served the tenant with his Notice of Dispute Resolution Proceedings Package. Nor did the landlord attend the hearing to present his evidence or provide submissions. As the landlord has both failed to satisfy me he served the tenant with the Notice of Dispute Resolution Proceedings Package and failed to present any evidence, I dismiss the landlord's application for dispute resolution without leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to recover the security deposit and pet damage deposit (doubled)?

Background and Evidence

The tenant provided a copy of the tenancy agreement. The tenancy began on August 31, 2018 with rent set at \$2,930.00 per month, payable on the last day of each month. No receipts for the security deposit and pet damage deposit from the landlord were provided and page 3 of the standard form RTB-1 tenancy agreement (indicating the collection of the deposits) was provided as evidence by the tenant however the tenant testified the landlord collected a security deposit in the amount of \$1,465.00 and a pet damage deposit of \$1,465.00 at the commencement of the tenancy.

The tenant gave the following undisputed testimony. No condition inspection report was done at the commencement of the tenancy. The tenancy ended on August 27, 2020 when the tenant accepted the validity of a landlord's notice to end tenancy. The landlord never offered the tenant any opportunity to attend for a condition inspection report at the end of the tenancy.

The tenant sent the landlord her forwarding address on form RTB-47 by registered mail on June 3, 2021 by registered mail to the landlord's residence. A proof of service document (form RTB-30) and a copy of the Canada Post receipt were provided as evidence by the tenant and the tracking number for the mailing is recorded on the cover page of this decision. The tenant testified that the landlord did not send her the security deposit or pet damage deposit since being notified of her forwarding address.

Analysis

Based on the tenant's undisputed testimony, I deem the landlord sufficiently served with the tenant's forwarding address on June 8, 2021, five days after it was sent by registered mail pursuant to sections 88 and 90 of the *Act*. The landlord filed his application seeking to retain the tenant's security deposit and pet damage deposit on June 24, 2021, sixteen days later. Section 38(1) of the *Act* requires the landlord to file an application against the security deposit and pet damage deposit within fifteen days of the date the tenancy ends, and the date landlord receives the tenant's forwarding address.

Despite this, at the commencement of the tenancy, the landlord did not pursue a condition inspection of the suite with the tenant, as required by section 23 of the *Act*. (reproduced below)

23 Condition inspection: start of tenancy or new pet

- (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
 - (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
 - (b) a previous inspection was not completed under subsection (1).
- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (4) The landlord must complete a condition inspection report in accordance with the regulations.
- (5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (6) The landlord must make the inspection and complete and sign the report without the tenant if
 - (a) the landlord has complied with subsection (3), and
 - (b) the tenant does not participate on either occasion.

Pursuant to section 24(2), the landlord's right to claim against the security deposit **is extinguished** if the landlord does not offer the tenant at least two opportunities for inspection.

Section 38(5) and (6) of the *Act* state that when the landlord's right to claim against the security deposit is extinguished, the landlord may not make a claim against it and must pay the tenant double the amount of the security deposit or pet damage deposit, or both, as applicable. This is further clarified in Residential Tenancy Branch Policy Guideline PG-17 which says, in part C-3:

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 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;

The language of section 38(6)(b) is mandatory. The landlord must pay the tenant \$2,930.00, representing a doubled security deposit and a further \$2,930.00 representing a doubled pet damage deposit. Pursuant to sections 38 and 67 of the *Act*, the tenant is entitled to a monetary order in the amount of \$5,860.00.

Conclusion

The landlord's application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of **\$5,860.00**. The landlord must be served with this Order and this Order may be filed in the Small Claims Division of the Provincial Court 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 17, 2022

Residential Tenancy Branch