



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on July 16, 2021 (the “Application”). The Tenant applied for return of double the security deposit.

The Tenant appeared at the hearing. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenant who did not have questions when asked. I told the Tenant they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant provided affirmed testimony.

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenant’s evidence.

The Tenant testified that the hearing package was sent to the Landlord at their residence by registered mail on August 20, 2021 and Tracking Number 185CA relates to this. The Tenant submitted registered mail receipts with Tracking Number 185CA on them. I looked Tracking Number 185CA up on the Canada Post website which shows the package was unclaimed and returned to the sender.

The Tenant testified that their evidence was sent to the Landlord at their residence by registered mail on October 27, 2021 and Tracking Number 812CA relates to this. The Tenant submitted registered mail receipts with Tracking Number 812CA on them. I looked Tracking Number 812CA up on the Canada Post website which shows the package was unclaimed and returned to the sender.

Based on the undisputed testimony of the Tenant, registered mail receipts and Canada Post website information, I am satisfied the hearing package and Tenant’s evidence

were served on the Landlord in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the “Act”). The Landlord cannot avoid service by failing to pick up registered mail. Pursuant to section 90(a) of the Act, the Landlord is deemed to have received the hearing package August 25, 2021 and Tenant’s evidence November 01, 2021. I find the Tenant complied with rules 3.1 and 3.14 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenant was given an opportunity to present relevant evidence and make relevant submissions. I have considered the relevant documentary evidence and all oral testimony of the Tenant. I have only referred to the evidence I find relevant in this decision.

I note that the Tenant asks for additional compensation in their materials relating to costs associated with obtaining evidence and registered mail fees which are not recoverable in these types of proceedings.

Issue to be Decided

1. Is the Tenant entitled to return of double the security deposit?

Background and Evidence

The Tenant testified as follows.

The rental unit was in a house with an upper and lower suite. The Landlord lived in the upper suite of the house during the tenancy and still does as far as the Tenant knows. The Tenant lived in the lower suite of the house. The Tenant did not share bathroom or kitchen facilities with the Landlord.

There was a verbal tenancy agreement between the parties. The tenancy started September 01, 2020 and was a month-to-month tenancy. Rent was \$495.00 per month due on the first day of each month. The Tenant paid a \$250.00 security deposit. The tenancy ended January 31, 2021.

The Tenant provided their forwarding address in writing to the Landlord by registered mail sent to their residence on March 23, 2021 and Tracking Number 446CA relates to this.

The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy.

The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

The Landlord did not apply to the RTB to keep the security deposit.

The Landlord still holds the full security deposit.

Move-in and move-out inspections were not done and the Landlord did not offer the Tenant two opportunities, one on the RTB form, to do these inspections.

I looked Tracking Number 446CA up on the Canada Post website which shows the package was unclaimed and returned.

The Tenant submitted the following relevant documentary evidence:

- Letters dated March 22, 2021 and April 01, 2021 to the Landlord with their forwarding address
- Photos of the registered mail and registered mail receipt for the March 22nd and April 01st letters
- An e-transfer showing the \$250.00 security deposit paid to the Landlord August 15, 2020
- A signed statement from the Tenant

Analysis

I accept the undisputed testimony of the Tenant regarding the living situation of them and the Landlord and I find the *Act* applies.

Section 38 of the *Act* sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit in full or file a claim with the RTB against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

I accept the undisputed testimony of the Tenant and based on it, as well as the documentary evidence submitted, I find the following.

The tenancy ended January 31, 2021.

The Tenant's forwarding address was provided to the Landlord in writing by registered mail sent to their residence on March 23, 2021. The forwarding address was served on the Landlord in accordance with section 88(c) of the *Act*. The Landlord cannot avoid service by failing to pick up registered mail. Pursuant to section 90(a) of the *Act*, the Landlord is deemed to have received the forwarding address March 28, 2021.

March 28, 2021 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from March 28, 2021 to repay the security deposit in full or file a claim with the RTB against the security deposit.

The Landlord did not repay the security deposit in full or file a claim with the RTB against the security deposit within 15 days of March 28, 2021. Therefore, the Landlord failed to comply with section 38(1) of the *Act*.

Sections 38(2) to 38(4) of the *Act* state:

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant...

No move-in or move-out inspections were done and the Tenant was not offered two opportunities, one on the RTB form, to do these inspections. The Tenant did not extinguish their rights in relation to the security deposit. Section 38(2) of the *Act* does not apply.

The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. Section 38(3) of the *Act* does not apply.

The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. Section 38(4) of the *Act* does not apply.

Given the above, I find the Landlord failed to comply with section 38(1) of the *Act* in relation to the security deposit and that none of the exceptions outlined in sections 38(2) to 38(4) of the *Act* apply. Therefore, the Landlord is not permitted to claim against the security deposit and must return double the security deposit to the Tenant pursuant to section 38(6) of the *Act*.

The Landlord must return \$500.00 to the Tenant. There is no interest owed on the security deposit because the amount of interest owed has been 0% since 2009. The Tenant is issued a Monetary Order for \$500.00.

Conclusion

The Tenant is issued a Monetary Order for \$500.00. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with the Order, the 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 *Act*.

Dated: February 15, 2022

Residential Tenancy Branch