Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

File #310045596:   MNSD
File #310050052:   MNRL-S

Introduction

The Tenant seeks return of her security deposit pursuant to s. 38 of the *Residential Tenancy Act* (the "*Act*").

The Landlord cross-applies to claim against the security deposit for unpaid rent pursuant to s. 67 of the *Act*.

K.B. appeared as the Tenant. The Landlord did not attend, nor did someone attend on their behalf. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Landlord failed to attend, the hearing was conducted in his absence as provided for by Rule 7.3 of the Rules of Procedure.

The Tenant affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Tenant confirmed that she was not recording the hearing.

The Tenant advises that she personally served the Landlord with the Notice of Dispute Resolution and her evidence in August 2021. The Tenant could not recall the specific date but indicated that it was shortly after the Notice of Dispute Resolution was provided to her by the Residential Tenancy Branch on August 24, 2021. I find that the Tenant's Notice of Dispute Resolution and evidence was served in accordance with s. 89 of the *Act*.

Dismissal of Landlord's Claim

The Tenant was unaware of the Landlord's application and advised that she did not receive a copy of the Landlord's Notice of Dispute Resolution. The Landlord was not present to demonstrate service of their application, nor was the Landlord present to advance their claim as required by Rule 6.6 of the Rules of Procedure.

Accordingly, I find that the Landlord has failed to prove their claim as set out in the Notice of Dispute Resolution and failed to demonstrate service of his application. I dismiss the Landlord's claim without leave to reapply.

Issue(s) to be Decided

1) Is the Tenant entitled to the return of her security deposit? Is the doubling provision of s. 38(6) of the *Act* engaged?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Tenant advised that she moved into the rental unit on February 1, 2019 and moved out on January 28, 2021. The Tenant confirmed that rent was $1,700.00 due on the 2nd day of each month. The Tenant further confirmed that she paid a security deposit of $850.00 to the Landlord. A copy of the written tenancy agreement was put into evidence by the Tenant.

The Tenant says that she provided the Landlord with her forwarding address by way of text message sent on January 28, 2021. The Tenant put a copy of the text message into evidence. The Tenant confirmed the forwarding address as stated in the text message.

The Tenant further stated that there was no move-in inspection, nor was a move-out inspection conducted. The Tenant says that she attempted to arrange a move-out inspection but that the Landlord refused to arrange the same with her.

Analysis

The Tenant applies for the return of her security deposit.

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. Under s. 38(6) of the *Act*, when a landlord fails to either repay or claim against the security deposit within the 15-day window, the landlord may not claim against the security deposit and must pay the tenant double their deposit.

I am satisfied that the Tenant provided the Landlord with their forwarding address by way of text message on January 28, 2021. I find that the text message put into evidence by the Tenant fulfills the requirement for the Tenant to provide her forwarding address in writing as required by s. 38(1)(b).

I accept the Tenant's evidence that no move-in inspection as conducted nor was a move-out inspection conducted. Thus, the Landlord's ability to claim against the security deposit was extinguished by both ss. 24(2) and 36(2) of the *Act*.

I am further satisfied based on the undisputed evidence of the Tenant that the tenancy ended on January 28, 2021 when she vacated the rental unit. This means that the Landlord had until February 12, 2021 to return the Tenant her security deposit. I find that the Landlord neither claimed against the security deposit nor did he repay the Tenant her security deposit within the timeframe required. I note that the Landlord's ability to claim against the security deposit was extinguished in any event.

Accordingly, I am satisfied that s. 38(6) is triggered and the Landlord must pay the Tenant double her security deposit. In this case, that is $1,700.00 ($850.00 x 2). The Tenant shall have a monetary order in that amount.

Conclusion

The Landlord's claim is dismissed as they failed to attend to advance their claim.

The Landlord failed to repay the security deposit within the 15-day requirement set out by s. 38(1) of the *Act*. Thus, the Tenant is entitled to the doubling return of her security deposit pursuant to s. 38(6) of the *Act*.

Pursuant to sections 38(6) and 67, I order that the Landlord pay **$1,700.00** to the Tenant.

It is the Tenant's obligation to serve this order on the Landlord. If the Landlord does not comply with this monetary order, it may be filed by the Tenant with 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: February 18, 2022

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Residential Tenancy Branch