



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 was reconvened as a result of the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- an order for the return of the security deposit pursuant to section 38; and
- authorization to recover the Tenant's filing fee for their application from the Landlord pursuant to section 72.

The Landlord did not attend this hearing. I left the teleconference hearing connection open until 1:58 am 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 Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

This hearing was reconvened from a non-participatory, *ex parte*, "direct request" proceeding. In an interim decision dated August 20, 2021 ("Interim Decision"), the presiding adjudicator determined that a participatory hearing was necessary to address questions that could not be resolved on the documentary evidence submitted by the Tenant. As a result, this hearing was scheduled and came on for hearing on February 14, 2022, to consider the Tenant's application. Notices of the reconvened hearing were enclosed with the Interim Decision. The Tenant was instructed to serve the NDRP, the Interim Decision and all other required documents, on the Landlord within three days of receiving the Interim Decision, in accordance with section 89 of the Act.

The Tenant testified she served the NDRP on the Landlord by registered mail on

on August 22, 2021. The Tenant submitted a registered mail receipt and tracking number to corroborate her testimony the NDRP was served on the Landlord. I find the Landlord was served with the NDRP in accordance with section 89 of the Act. I find, pursuant to section 90, the Landlord was deemed to have been served with the NDRP on August 27, 2021.

The Tenant stated she had not receive any evidence from the Landlord.

Issues to be Decided

Is the Tenant entitled to:

- a monetary order of \$800.00, representing the return of double the security deposit?
- recover the filing fee of the Tenant's application from the Landlord?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Tenant's application and my findings are set out below.

The Tenant testified the tenancy commenced on June 1, 2014, with rent of \$800.00 payable on the 1st day of each month. The Tenant stated she paid a security deposit of \$400.00 to the Landlord together with the rent of \$800.00 on or about June 1, 2014. The Tenant stated that she never gave the Landlord consent to apply the deposit to rent or for damages. The Tenant stated the rent is now \$950.21 per month.

The Tenant stated she vacated the rental unit on May 1, 2021. The Tenant stated she and the Landlord conducted move-in and move-out condition inspection reports. The Tenant stated that, following the move-out inspection on May 1, 2021, she provided her forwarding address to the Landlord by text message. The Tenant submitted a screenshot of a text message in which the Landlord requested the Tenant's forwarding address. In the same thread of text messages, the Tenant texted the Landlord with her forwarding address.

The Tenant submitted a screenshot of a text message in which the Landlord indicated that she was replacing the carpet in the living room but the hallway and bedroom were

staying. In response, the Tenant advised the Landlord that she would clean the bedroom and hallway carpets. In the same text thread, the Landlord stated "I'm going to cash your check for next month but you will still get your damage deposit back so don't worry about that.". The Tenant submitted a screenshot of another text message sent by the Landlord to her at a later date in which the Landlord stated, in part, "Hi [first name of Tenant] the floors all needed to be replaced so I'm sorry about your damage deposit is not going to be returned.". The Tenant stated the Landlord has not returned the Tenants security deposit.

Analysis

Section 38(1) of the Act states:

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 undisputed testimony of the Tenant, I find the tenancy ended on May 1, 2021, 2021. The Tenant stated she texted the Landlord with her forwarding address on May 1, 2021. Serving a notice by text is not a method of service allowed by section 88 of the Act. However, the Landlord requested, in a text message, that the Tenant provide her forwarding address.

The Tenant responded back, in the same thread of texts, with her forwarding address. Pursuant to section 70(2)(b) of the Act, I find that the Landlord was sufficiently served with the Tenant's forwarding address on May 4, 2021. being three days after the Tenant texted the Landlord with her forwarding address. Pursuant to section 38(1), the Landlord had until May 19, 2021, being 15 days after

receipt of the forwarding address, to return the deposit of \$400 to the Tenant or, alternatively, make an application for dispute resolution claiming against the security deposit.

The Landlord did not return the security deposit to the Tenant within 15 days of the deemed receipt of the Tenants' forwarding address. I find the Landlord did not make an application for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding address from the Tenant. Based on the above, I find the Landlord failed to comply with her 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. Section 38(6) of the Act states:

- (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.*

[emphasis in italics added]

The language of section 38(6)(b) is mandatory. As the Landlord has failed to comply with section 38(1), I must order that she pay the Tenant double the amount of the security deposit for a total of \$800.00.

Pursuant to section 72(1) of the Act, as the Tenant has been successful in her 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 \$800.00, representing an amount equal to two times the amount of the original \$400.00 security deposit paid by the Tenant to the Landlord, plus reimbursement of the Tenant's filing fee of \$100.00.

The Tenant must serve this decision and attached order on the Landlord as soon as possible after receiving a copy of it 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: February 25, 2022

Residential Tenancy Branch