



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NOVA Relocation Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for the return of the security deposit that the Landlord is holding without cause; and to recover the \$100.00 cost of her Application filing fee.

The Tenant and two witnesses, H.G. and D.C. ("Witnesses"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlords. I explained the hearing process to the Tenant and gave her an opportunity to ask questions about it. During the hearing the Tenant was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that she served the Landlord with the Notice of Hearing documents by Canada Post registered mail, sent on September 3, 2021, at 12:15 p.m. and in person to their drop box. The Tenant provided a copy of an email she sent to the Landlords dated September 15, 2021, to their general and accounting department email addresses. This email informed the Landlords of the RTB application, her attempts to serve them, and it included the file number for their reference and seven attachments. Based on the evidence before me in this matter, I find that the Landlord was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenant in the absence of the Landlords.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and she confirmed these addresses in the hearing. She also confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Tenant that pursuant to Rule 7.4, I would only consider her written or documentary evidence to which she pointed or directed me in the hearing. I also advised the Tenant that she is not allowed to record the hearing and that anyone who was recording it was required to stop immediately. The Tenant affirmed that she was not recording the hearing.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to Recovery of the \$100.00 Application filing fee?

Background and Evidence

The Tenant confirmed that the fixed term tenancy began on February 1, 2021, and ran to August 30, 2021; however, the Tenant said that she moved out on August 1, 2021. The Tenant said she paid the Landlord a monthly rent of \$1,200.00, due on the first day of each month. She said she paid the Landlord a security deposit of \$600.00, and no pet damage deposit.

The Tenant said she moved out on August 1, 2021, and provided her forwarding address to the Landlord in writing on August 2, 2021, asking for the return of her security deposit. However, the Tenant said that the Landlord did not return her security deposit, which is what she seeks from this proceeding.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

I find that the tenancy ended on August 1, 2021, and that the Tenant provided her forwarding address to the Landlord on August 7, 2021, five days after it was mailed to the Landlord. Section 38 (1) of the Act states the following about the connection of these dates to a landlord's requirements surrounding the return of the security deposit:

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.

The Landlord was required to return the **\$600.00** security deposit within fifteen days of August 7, 2021, namely by September 1, 2021, or to apply for dispute resolution to claim against the security deposit, pursuant to section 38 (1). There is no evidence before me from the Landlord indicating that they returned any of the security deposit, or that they applied to the RTB for dispute resolution, claiming against the security deposit. Accordingly, I find the Landlord failed to comply with their obligations under section 38 (1).

Section 38 (6) (b) states that if a landlord does not comply with section 38 (1) that the landlord must pay the tenant double the amount of the security deposit. There is no interest payable on the security deposit.

I, therefore, award the Tenant **\$1,200.00** from the Landlord in recovery of double the security deposit, pursuant to sections 38 and 67 of the Act. Given the Tenant's success in her Application, I also award her recovery of the **\$100.00** Application filing fee, pursuant to section 72 of the Act.

I grant the Tenant a monetary order of **\$1,300.00** for the return of double the security deposit, pursuant to sections 38 and 67 of the Act.

Conclusion

The Tenant's claim against the Landlord for return of double the security deposit is successful in the amount of \$1,200.00. The Landlord did not return the Tenant's security deposit or apply for dispute resolution in compliance with the Act. I award the Tenant with double the amount of the \$600.00 security deposit, plus recovery of the \$100.00 Application filing fee.

I grant the Tenant a Monetary Order under section 67 of the Act from the Landlord in the amount of \$1,300.00. This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: March 22, 2022

Residential Tenancy Branch