



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A participatory hearing was held, via teleconference, on March 1, 2022. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- An order that the Landlord return all or part of the security deposit or pet damage deposit

The Landlord and the Tenant both attended the hearing and provided affirmed testimony. The Landlord did not provide any evidence for this hearing. However, he confirmed that he received the Tenant's application, Notice of Dispute Resolution Proceeding and evidence. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

Background and Evidence

The parties confirmed the tenancy started in July 2015, and ended on June 29, 2021, when the Tenant moved out of the rental unit, and returned the keys. The parties agreed that monthly rent was set at \$1,850.00 and was due on the first of the month, and the Landlord collected a security deposit of \$925.00.

The Tenant stated that no condition inspection report was completed at the start, or the end of the tenancy. The Landlord did not refute this point. The Tenant stated that before he moved out, he sent his forwarding address in writing to the Landlord by way of an email. The Landlord acknowledged receiving the Tenant's forwarding address, via email, on June 26, 2021, the same day he responded to the email.

Both parties agree that the Landlord sent a cheque to the Tenant at his forwarding address in the amount of \$367.73. The Landlord retained \$557.27 of the initial deposit. The Tenant stated he did not agree to any deductions from his deposit, and feels it is not fair the Landlord can unilaterally withhold the money. The Tenant stated he has not been served with any Notice of Dispute Resolution Proceeding from the Landlord for an application against his deposit.

Analysis

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

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, both parties confirmed that the Tenant moved out of the rental unit on June 29, 2021, which I find reflects the end of the tenancy. The Landlord confirmed that he received the Tenant's forwarding address on June 26, 2021, via email. I find this is when the Landlord received the Tenant's forwarding address in writing.

In determining that the Landlord received the Tenant's forwarding address "in writing" when it was sent by email message, I was guided, in part, by the definition provided by the Black's Law Dictionary Sixth Edition, which defines "writing" as "handwriting,

typewriting, printing, photostating, and every other means of recording any tangible thing in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof". I find that an email message meets the definition of written as defined by Black's Law Dictionary.

Section 88 of the *Act* specifies a variety of ways that documents, other than documents referred to in section 89 of the *Act*, must be served. Service by text message or email is not one of methods of serving documents included in section 88 of the *Act*.

Section 71(2)(c) of the *Act* authorizes me to conclude that a document not given or served in accordance with section 88 or 89 of the *Act* is sufficiently given or served for purposes of this *Act*. As the Landlord acknowledged receiving the email message in which the Tenant provided his forwarding address, I find that the Landlord was sufficiently served with the Tenant's forwarding address.

In any event, the Landlord had 15 days, after the tenancy ended on June 29, 2021, to either return the deposit, in full, or file an application against the deposit. The Landlord only returned \$367.73, and it does not appear an application was filed against the deposit within 15 days, by July 14, 2021. It also does not appear that any agreement was reached about deductions from the deposit. As such, I find the Landlord breached section 38(1) of the *Act*.

Accordingly, as per section 38(6)(b) of the *Act*, I find the Tenant is entitled to recover double the amount of the security deposit (\$925.00 x 2), previously held by the Landlord, less the amount the Landlord has already given back. Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenant paid to make the application for dispute resolution.

In summary, I make the monetary order as follows:

Item	Amount
Return of Double security deposit (\$925.00 x 2)	\$1,850.00
Filing Fee	\$100.00
Less: Returned Portion of Security Deposit	(\$367.73)
Total Monetary Order	\$1,582.27

Accordingly, pursuant to section 67 of the *Act*, I grant the above monetary order based on the Landlord's failure to deal with the security deposit in accordance with section 38 of the *Act*.

Conclusion

I grant the Tenant a monetary order in the amount of **\$1,582.27**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: March 01, 2022

Residential Tenancy Branch