



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSDS-DR, FFT**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

On September 02, 2021, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the Act) adjourned the landlord's application for dispute resolution for the following items to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

In this type of matter, the tenants must prove that they served the landlord with the forwarding address in a manner that is considered necessary as per sections 71(2) (a) and 88 of the Act.

On the Proof of Service of the Forwarding Address form, the tenants have indicated they sent the forwarding address to the landlord by registered mail. However, I find the tenants have not submitted a copy of a Canada Post Customer Receipt containing the tracking number to confirm the registered mailing. The tenants have also indicated the forwarding address was sent to the landlord by e-mail; however, I find the tenants have not submitted a copy of the outgoing e-mail to confirm this e-mailing.

Furthermore, the tenants have indicated the forwarding address was sent on July 2, 2021; however, the copy of the forwarding address submitted by the tenants is dated July 29, 2021. I find I am not able to confirm service of the forwarding address to the landlord, which is a requirement of the Direct Request Proceeding, and that a hearing is necessary to address this issue.

This hearing dealt with the application filed by the tenant pursuant the *Residential Tenancy Act* (the “*Act*”) for:

- An order for the return of a security deposit that the landlord is holding without cause, pursuant to section 38.1; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord and the tenant KM attended the hearing. The landlord acknowledged service of the tenant’s Notice of Dispute Resolution Proceedings and the tenant acknowledged service of the landlord’s evidence. Neither party took issue with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure (“Rules”). The parties were informed that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the *Act*. Both parties confirmed that they were not recording the hearing.

Preliminary Issue

The landlord submitted evidence related to claims for compensation sought against the tenant in his evidence package. I advised the parties that the nature of this hearing was not to determine whether the landlord should be compensated for alleged damage to the rental unit under section 67 of the *Act*; but rather whether the tenant has provided sufficient evidence to prove the security deposit should be returned to him after the end of the tenancy under section 38. As such, I advised the parties that the documents uploaded related to damage to the rental unit would not be considered; only the documents related to the end of the tenancy and when the landlord received the tenant’s forwarding address would be considered.

Issue(s) to be Decided

Is the tenant entitled to compensation for the return of the security deposit pursuant to section 38 of the *Act*?

Can the tenant recover the filing fee?

Background and Evidence

The tenant submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants, indicating a monthly rent of \$1,950.00 and a security deposit of \$975.00, for a tenancy commencing on February 29, 2020
- A copy of a Mutual Agreement to End a Tenancy which was signed by the landlord and the tenants on April 29, 2021, indicating the tenancy would end as of May 31, 2021
- A copy of a Tenant's Notice of Forwarding Address for the Return of Security (the forwarding address) dated July 02, 2021
- A copy of an email sent from the tenant on July 02, 2021 with an attached copy of a letter described above
- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form (Proof of Service of the Forwarding Address) which indicates that the forwarding address was sent to the landlord by registered mail and by e-mail at 8:27 pm on July 2, 2021
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposit paid by the tenants and indicating the tenancy ended on May 31, 2021

The tenant gave the following testimony. The tenancy ended on May 31, 2021; the date indicated on the mutual agreement to end the tenancy. The tenant attempted to have the landlord attend to do a condition inspection report at the end of the tenancy, but the landlord would not cooperate. The tenant grew frustrated with the landlord's failure to return his security deposit, so he sent the landlord his forwarding address by regular mail and by email on July 02, 2021. A copy of the email, sent at 20:27 was provided as evidence by the tenant. The email includes an attachment which includes the tenant's forwarding address and a request for the landlord to return his security deposit.

The tenant testified that the request for return dated July 2nd didn't result in the return of his security deposit, so he sent another one three weeks later. That is the copy of the forwarding address form sent July 29th that the adjudicator took exception to.

Lastly, the tenant testified that he tried to get the landlord to attend with him to do a condition inspection report with him on the last day of the tenancy. He called the landlord multiple times and sent the landlord several emails asking to meet with the landlord. Instead, the landlord continually told the tenant to drop the keys off at the rental unit. The texts were provided as evidence by the tenant.

The landlord gave the following testimony. He agrees the tenancy ended on May 31, 2021. The landlord denies he was served with the tenant's forwarding address by email on July 2nd. The landlord confirmed his email address during the hearing, and I note

that the email address provided by the landlord at the hearing matches one of the 3 email addresses the tenant's notice of forwarding address was sent to on July 2nd by email.

The landlord testified that the first time he learned of the tenants' forwarding address was when he received the tenant's direct request proceedings package and the tenant's form RTB-51 (Address for Service) form.

The landlord testified that a condition inspection report was not done with the tenants at the end of the tenancy because the tenants were late. The landlord did not provide any further details on this issue.

Analysis

First, I find the tenancy ended on May 31, 2021.

Section 38 of the *Act* provides the legislation for determining the return of security deposits:

Return of security deposit and pet damage 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.

...

- (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.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure state that the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities which means it is more likely than not that the facts occurred as claimed.

Here I find the tenant has provided compelling evidence that he served the landlord with his forwarding address by email on July 02, 2021. I make this finding based on the copy of the email transmission provided by the tenant indicating it was sent to the landlord at three different email addresses at 20:27 p.m. on that date.

In the landlord's evidence package is an email sent to the tenant dated July 15, 2021 at 5:39 p.m. entitled "*Re:Refund of security deposit*". In this email, the landlord lists missing items, damaged and modified and charged against the tenant's \$975.00 security deposit. I note the landlord's email address on this outgoing email is one of the email addresses that the tenant sent the forwarding address to on July 02, 2021. Further, during the hearing, the landlord confirmed another one of the email addresses used by the tenant to supply the landlord with his forwarding address. On a balance of probabilities, I am satisfied the tenant served the landlord with his forwarding address three days after it was sent by email, on July 05, 2021, pursuant to sections 43(3) and 44 of the Regulations. The landlord did not make a claim against the security deposit by July 20, 2021, fifteen days after receiving the forwarding address.

Section 38.1 states:

Order for return of security and pet damage deposit

38.1 (1)A tenant, by making an application under Part 5 [*Resolving Disputes*] for dispute resolution, may request an order for the return of an amount that is double the portion of the security deposit or pet damage deposit or both to which all of the following apply:

- (a)the landlord has not applied to the director within the time set out in section 38 (1) claiming against that portion;
- (b)there is no order referred to in section 38 (3) or (4) (b) applicable to that portion;
- (c)there is no agreement under section 38 (4) (a) applicable to that portion.

(2)In the circumstances described in subsection (1), the director, without any further dispute resolution process, may grant an order for the return

of the amount referred to in subsection (1) and interest on that amount in accordance with section 38 (1) (c).

Pursuant to section 38(6)(a), the landlord's right to claim against the security deposit was extinguished and his right to file an application for dispute resolution to file a claim against it under section 38(1)(d) was likewise extinguished. Therefore, pursuant to section 38.1(2) of the *Act*, the landlord is obliged pay the tenant double the amount of the security deposit. I make a monetary award in favour of the tenant for \$1,950.00.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I issue a monetary order in the tenants' favour in the amount of **\$2,050.00**.

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