



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

In this application for dispute resolution, the tenant applied on September 8, 2021 for:

- an order for the return of the security deposit that the landlord is holding without cause; and
- recovery of the filing fee.

The hearing was attended by the tenant but not the landlord (SK). The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; he was made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The tenant testified he served the Notice of Dispute Resolution Proceeding (NDRP) and evidence on the landlord by email on October 22, 2021, and provided a proof of service form, which states that the documents were sent to the landlord by email because she did not provide a mailing address. The proof of service form lists the email the documents were sent to; it matches the email for the landlord in correspondence between the parties submitted as evidence. The tenant testified that on May 18, 2022, the landlord responded to his October 22, 2021 email, to provide him with additional responsive evidence. Based on the affirmed undisputed testimony of the tenant, I find he served the landlord in accordance with section 89 of the Act, and deem the NDRP and evidence received by the landlord on October 25, 2021, in accordance with section 44 of the regulations.

Issues to be Decided

- 1) Is the tenant entitled to a monetary order for the return of the security deposit?
- 2) Is the tenant entitled to the filing fee?

Background and Evidence

The tenant provided the following facts regarding the tenancy. It began March 1, 2021; rent was \$750.00, due on the last day of the month for the following month; and the tenant paid a security deposit of \$430.00, which landlord SK still holds.

The tenant testified he provided a forwarding address in writing by email on August 10, 2021. A copy of the email is submitted as evidence.

The tenant testified that he rented the bedroom of the unit from SK, who identified herself as the landlord. The tenant testified that SK rented out the living room to someone else. A copy of the tenancy agreement is submitted as evidence. On it, SK identifies herself as the landlord.

The tenant testified that on July 2, 2021 landlord SK told him he had to leave, and gave him a letter stating that his tenancy is ending and he must leave by July 31, 2021. The tenant testified that he then learned that SK was not the landlord, and he took over the tenancy as of August 1, 2021, signing a tenancy agreement with the “real” landlord.

The tenant testified that landlord SK has not returned his security deposit, and that he did not authorize SK to keep any portion of the security deposit.

The tenant testified that no move-in inspection was done with landlord SK at the beginning of his tenancy.

Analysis

Section 38 of the Act requires the landlord to either return the tenant’s security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant’s forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit.

Section 24 of the Act provides that the right of a landlord to claim against a security deposit is extinguished if they do not comply with the requirements of section 23 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

The tenant has provided affirmed undisputed testimony that no condition inspection report was prepared at any time for this tenancy. Consequently, I find that the landlord has extinguished her right to make a claim against the deposit for this tenancy.

Based on the undisputed evidence before me, I find that the landlord has extinguished her right to claim against the security deposit by failing to complete a condition inspection report in accordance with the Act and has failed to return the deposit in full within 15 days of receipt of the tenant's forwarding address. I accept the tenant's testimony that he has not waived his right to obtain a payment pursuant to section 38 of the Act as a result of the landlord's failure to abide by the provisions of that section of the Act. Under these circumstances and in accordance with section 38(6) of the Act, I find that the tenant is entitled to double the value of the security deposit paid for this tenancy. No interest is payable over this period.

As the tenant was successful in his application, I allow the tenant to recover his filing fee from the landlord in accordance with section 72 of the Act.

I find the tenant is entitled to a monetary order in the amount of \$960.00, comprised of \$860.00 for the doubled security deposit of \$430.00, and \$100.00 for the filing fee.

Conclusion

The tenant's application is granted.

The tenant is granted a monetary order in the amount of \$960.00.

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: May 30, 2022

Residential Tenancy Branch