



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A participatory hearing was held, via teleconference, on July 11, 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 Tenant and attended the hearing. However, the Landlord did not. The Tenant stated that she served the Landlords each with her Notice of Hearing, and evidence, by sending these documents via registered mail on December 11, 2021. The Tenant did not provide documentary evidence showing a receipt or tracking number. However, she explained how and when this package was mailed, and I accept her affirmed testimony that she sent the above noted documents on December 11, 2021, by registered mail. Pursuant to section 90 of the Act, I find the Landlord is deemed served with this package on December 16, 2021, the fifth day after it was mailed.

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 Tenant stated that she paid a security deposit of \$1,300.00 and a pet deposit of \$1,300.00. The Tenant stated that she has not received any of the deposits back since she moved out. The Tenant stated that she moved out of the rental unit on July 31, 2021, after being given a 2-Month Notice from the Landlord.

The Tenant stated that she gave the Landlord her forwarding address in writing (for the return of the deposits) on November 12, 2021, by posting a copy of the letter directly to the Landlord's front door. The Tenant did not provide a copy of this letter into evidence, but read the letter out loud in the hearing. The Tenant stated that the Landlord did not return any money and has ignored all attempts at contact.

Analysis

Based on the undisputed 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, the Tenant moved out of the rental unit on July 31, 2021, which I find reflects the end of the tenancy. The Tenant stated she gave a letter to the Landlord with her forwarding address by posting it to the Landlord's front door on November 12, 2021. Pursuant to section 90 of the *Act*, I find the Landlord is deemed served with the Tenant's forwarding address in writing on November 15, 2021, the 3rd day after it was posted on the Landlord's front door.

I note the Tenant did not authorize any deductions from the security deposit. There is also no evidence to show that either party extinguished their right to the security deposit.

Pursuant to section 38(1) of the Act, the Landlord had 15 days from receipt of the forwarding address in writing (until November 30, 2021) to either repay the security and pet deposit (in full) to the Tenant or make a claim against it by filing an application for dispute resolution. There is no evidence that the Landlord did either and 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 and pet deposit (\$2,600.00 x 2). 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 issued the Tenant a monetary order for \$5,300.00 based on the Landlord's failure to deal with the security deposit in accordance with section 38 of the Act.

Conclusion

I grant the Tenants a monetary order in the amount of **\$5,300.00**. 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: July 11, 2022

Residential Tenancy Branch