



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 38.1 of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the tenant to obtain monetary compensation for the return of the security deposit (the deposit) and to recover the filing fee paid for the application.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the tenant on June 8, 2022.

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on June 23, 2022, the tenant sent the landlord the Notice of Dispute Resolution Proceeding - Direct Request by registered mail. The tenant provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this mailing.

Based on the written submissions of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on June 23, 2022 and are deemed to have been received by the landlord on June 28, 2022, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation for the return of a security deposit pursuant to sections 38 and 67 of the *Act*?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The tenant submitted the following relevant evidentiary material:

- A copy of a residential sublease agreement which was signed by the landlord and the tenant on November 3, 2021, indicating a monthly rent of \$900.00 and a security deposit of \$450.00, for a sublet tenancy commencing on November 7, 2021
- A copy of a note signed by the original landlord giving authorization to the original tenant to sublet the rental unit
- A copy of a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit (the forwarding address) dated May 13, 2022
- A copy of an e-mail sent from the tenant to the landlord on May 13, 2022, containing the forwarding address as an attachment
- A copy of several e-mails exchanged between the landlord and the tenant demonstrating that the landlord has previously used e-mail to serve the tenant photo documents
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposit paid by the tenant and indicating the tenant vacated the rental unit on April 2, 2022

Analysis

Section 38(1) of the *Act* states that the landlord has fifteen days from the end of tenancy and the date they received the forwarding address to either return the deposit(s) in full or make an application for dispute resolution claiming against the deposit(s).

Section 38(6) of the *Act* states that if the landlord does not return the deposit(s) or file a claim against them within the fifteen days, the landlord must pay the tenant double the amount of the deposit(s).

I have reviewed all documentary evidence and I find that the tenant paid a security deposit in the amount of \$450.00, as per the sublease agreement.

I accept the following declarations made by the tenant on the Tenant's Direct Request Worksheet:

- The tenant has not provided consent for the landlord to keep all or part of the deposit
- There are no outstanding Monetary Orders against the tenant for this tenancy
- The tenant has not extinguished their right to the deposit in accordance with sections 24(1) and 36(1) of the *Act*

In accordance with the Tenant's Direct Request Worksheet, I find that the tenancy ended on April 2, 2022, the day the tenant moved out of the rental unit.

In this type of matter, the tenant must prove that they served the landlord with the forwarding address in accordance with section 88 of the *Act*. Section 88 of the *Act* provides that a forwarding address may be served "*by any other means of service provided for in the regulations.*"

Section 43(1) of the *Residential Tenancy Regulation* provides that documents "*may be given to a person by emailing a copy to an email address provided as an address for service by the person.*"

I note that the sublease agreement does not provide an e-mail address for service of documents for the landlord. However, I find that the landlord sent documents to the tenant by e-mail on March 2, 2022. Through their past behavior, I find that the landlord has demonstrated they can send and receive documents by e-mail.

For this reason, and in accordance with sections 43(1) and 44 of the *Residential Tenancy Regulation*, I find that the forwarding address was served on May 13, 2022 and is considered to have been received by the landlord on May 16, 2022, three days after its e-mailing.

I accept the evidence before me that the landlord has failed to return the deposit to the tenant and has not filed an Application for Dispute Resolution requesting to retain the deposit by May 31, 2022, within the fifteen days granted under section 38(1) of the *Act*.

Based on the foregoing, I find that the landlord must pay the tenant double the amount of the security deposit in accordance sections 38(6) of the *Act*.

Therefore, I find that the tenant is entitled to a monetary award in the amount of \$900.00, double the amount claimed by the tenant for the security deposit.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the tenant a Monetary Order in the amount of \$1,000.00 for the return of double the security deposit and for the recovery of the filing fee for this application. The tenant is provided with this Order in the above terms and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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 14, 2022

Residential Tenancy Branch