



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CORONATION RICHTER GP
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDB-DR, FFT

Introduction

This hearing dealt with the Tenant's application under the Residential Tenancy Act (the "Act") for:

- return of the Tenant's security deposit and pet damage deposit pursuant to section f38; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Tenant attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Landlord did not attend this hearing. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Tenant and I were the only ones who had called into the hearing.

I advised the Tenant that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The Tenant confirmed she served the Landlord with the notice of dispute resolution proceeding package and supporting documentary evidence (collectively, the "NDRP Package") by registered mail on January 26, 2022. The Tenant submitted a Canada Post registered mail receipt with a tracking number in support. That Canada Post tracking number is referenced in the cover page of this decision. Tracking records from Canada Post show that the package was delivered on February 7, 2022. Based on the

above, I find the Landlord was served with the NDRP Package in accordance with sections 88(c) and 89(1)(c) of the Act on February 7, 2022.

Issues to be Decided

1. Is the Tenant entitled to return of the security deposit and pet damage deposit from the Landlord?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The Tenant testified that this tenancy commenced on April 15, 2018 with a previous landlord, DT. The Tenant testified that it was a month-to-month tenancy and rent was \$1,200.00 per month. The Tenant submitted that she never received a copy of her tenancy agreement, though she had signed one and was supposed to receive a copy via email.

The Tenant testified she had paid a \$600.00 security deposit and a \$600.00 pet damage deposit. The Tenant submitted receipts for these deposits dated April 14, 2018. The Tenant testified that these receipts were signed by CM, a property manager who was previously hired by DT to manage the rental unit. The Tenant submitted that the deposit receipts are proof of a tenancy agreement.

The Tenant testified she understood that the rental property was up for sale as part of a land assembly. The Tenant stated DT had not specifically told the Tenant that he was selling the rental property. The Tenant testified that she knew the property had sold when it was no longer listed. The Tenant's application states that the Tenant had to do a title search of the rental property to find out who the new landlord was. The Tenant submitted a title search of the rental property dated November 29, 2021 (the "Title Search") into evidence. The Title Search indicates that the Landlord is the registered owner of the rental property, and its application for title transfer was received by the Land Title Office on November 17, 2021 and entered on November 19, 2021. The Title Search also includes the Landlord's mailing address.

The Tenant testified that at the time, she did not know if the rental property would be torn down or to whom she would pay rent the next month. The Tenant testified she left the rental property because it was unsafe and unlivable. The Tenant stated there were

problems with the plumbing and electricity in the rental unit. The Tenant confirmed that the tenancy ended on November 30, 2021.

The Tenant testified she had paid rent to DT up to November 2021.

The Tenant testified that no move-in or move-out inspections of the rental unit had taken place. The Tenant confirmed that no one had contacted her to arrange for such inspections.

The Tenant testified that she searched the Landlord's name online and found individuals DP and JVL to be related to the Landlord. The Tenant's evidence indicates that on December 3, 2021, the Tenant emailed a letter dated November 30, 2021 (the "Letter") to the Landlord, addressed to DP and JVL, regarding the Tenant's forwarding address and the return of the Tenant's security and pet damage deposits. The Tenant submitted copies of the Letter and the email enclosing the Letter into evidence. The Tenant's application indicates that a copy of the Letter was also sent to the Landlord via regular mail. The Tenant confirmed she did not receive any response.

Analysis

1. Is the Tenant entitled to return of the security deposit and pet damage deposit from the Landlord?

Under section 1 of the Act, a "tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

In this case, I accept the Tenant's undisputed testimony under oath that she had signed a tenancy agreement with respect to the rental unit. I also accept the Tenant's evidence that she had paid a \$600.00 security deposit and a \$600.00 pet damage deposit to the former landlord DT, based on the deposit receipts provided.

I accept the Tenant's evidence that ownership of the rental unit changed sometime in mid-November 2021 before the tenancy ended on November 30, 2021.

Section 93 of the Act states:

Obligations pass with transfer or assignment of land

93 The obligations of a landlord under this Act with respect to a security deposit or a pet damage deposit run with the land or reversion.

Section 1 of the Act defines a “landlord”, in relation to a rental unit, to include any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

I find that the Landlord, as the new owner of the rental unit and the assignee of the former landlord DT, qualifies as a “landlord” under the Act for the purpose of this application.

I accept the Tenant’s evidence that she sent a copy of the Letter containing her forwarding address to the Landlord via regular mail on December 3, 2021. As such, I find that the Landlord was served with the Tenant’s forwarding address in writing in accordance with section 88(c) of the Act. Pursuant to section 90(a) of the Act, I find the Landlord is deemed to have received the Tenant’s forwarding address in writing on December 8, 2021.

Sections 38(1) and 38(6) of the Act state:

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.

In this case, I find the Landlord has not complied with section 38(1) of the Act by returning the deposits or making an application for dispute resolution within 15 days of receiving the Tenant's forwarding address in writing, or by December 23, 2021. Accordingly, I find that the Tenant is entitled to double the security deposit and pet damage deposit from the Landlord under section 38(6) of the Act.

Policy Guideline 17 states that "[u]nless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit". Although the Tenant's application states that she is seeking the return of her \$600.00 security deposit and \$600.00 pet damage deposit, I do not find the Tenant to have specifically waived the doubling provision of section 38(6).

Based on the foregoing, I conclude that the Landlord is required to pay the Tenant double the security deposit and pet damage deposit pursuant to section 38(6) of the Act, which is equivalent to $2 \times (\$600.00 + \$600.00) = \$2,400.00$.

2. Is the Tenant entitled to recover the filing fee?

The Tenant has been successful in this application. I grant the Tenant's claim for recovery of the \$100.00 filing fee under section 72(1) of the Act.

Conclusion

Pursuant to sections 38(6) and 72(1) of the Act, I grant a Monetary Order to the Tenant in the amount of **\$2,500.00**. This Order may be served on the Landlord, filed in the Small Claims Division of the Provincial Court, 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: September 21, 2022

Residential Tenancy Branch