Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied for a monetary order for double their security deposit, plus the filing fee.

The tenant gave affirmed testimony, was provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions during the hearing.

As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing dated March 30, 2022 (Hearing Package) was considered. The tenant affirmed that they served the landlord with the Hearing Package by registered mail on March 31, 2022. The registered mail tracking number has been included on the cover page of this decision for ease of reference. The tenant stated that the registered mail package was addressed to the landlord and the address used was the most recent service address they were provided in a text dated August 2, 2021 from the landlord (Text). The Text confirmed the most recent address provided by the landlord to the tenant. The Canada Post online registered mail website confirms that the Hearing Package was unclaimed by the landlord and on April 26, 2022 was returned to the sender. According to the Act, documents served by registered mail are deemed served five days after the date the documents are mailed. Therefore, I find the landlord was served with the Hearing Package on April 7, 2022, based on the undisputed evidence before me.

Pursuant to Rule 7.1 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules), which address the consequences for failing to attend a dispute resolution hearing, the hearing proceeded without the respondent landlord present. I consider this application to be undisputed by the landlord as a result.

Preliminary and Procedural Matter

The tenant confirmed the email addresses for both parties during the hearing. The tenant also confirmed that email was the regular method of communicating with the landlord.

Issues to be Decided

- Did the landlord breach section 38 of the Act resulting in double the security deposit being owed to the tenant?
- If yes, is the tenant entitled to recover the cost of the filing fee under the Act?

Background and Evidence

The tenant explained that the tenancy agreement submitted in evidence contained a few errors in date. Namely, the start date says October 1, 2018, when the correct start date was October 1, 2017. Also, the end of the fixed-term reads September 30, 2019, when it should have read September 30, 2018. Based on the undisputed evidence of the tenant, I find the tenancy converted to a month-to-month tenancy after September 30, 2018.

Monthly rent began as $1,200 per month and was due on the first day of each month. According to the tenant, the monthly rent was increased to $1,262 following a rent increase during the tenancy. The tenant paid a security deposit of $600, which was confirmed on the tenancy agreement. The tenant provided a receipt for the $600 security deposit in evidence. The tenancy agreement indicates that it was paid in October 2017, and the rent receipt submitted in evidence is dated October 19, 2017. The tenant testified that they vacated the rental unit on February 26, 2022 and returned the keys to the landlord via the realtor on March 2, 2022.

The tenant stated that they had a verbal conversation with the landlord on March 5, 2022, where the landlord stated they were not returning the security deposit. The tenant then submitted their written forwarding address to the landlord in support of their application. The tenant provided their forwarding address via email dated March 9, 2022 at 6:12 a.m. The tenant stated that the landlord did not response to their email. The tenant confirmed that they have not been served with an application from the landlord claiming against the security deposit.

In support of regular email communication, the tenant testified that on February 23, 2022 at 3:32 p.m. the landlord emailed the tenant and that the tenant replied to that email on February 24, 2022 at 7:21 a.m.

The tenant affirmed that they did not provide the landlord with any verbal or written permission to retain any portion of their security deposit. The tenant confirmed that the landlord as not returned any amount of their $600 security deposit.

Analysis

Based on the above, the undisputed testimony and undisputed evidence, and on a balance of probabilities, **I find** that the landlord has breached of section 38 of the Act.

I have no evidence before me to support that the tenant had agreed, in writing, that the landlord could retain any portion of the security deposit, which has accrued no interest to date. There was also no evidence to show that the landlord had applied for dispute resolution regarding the security deposit within 15 days of March 2, 2022, being the end of tenancy date and March 12, 2022, being the deemed service date of the March 9, 2022 email that I find includes the written forwarding address of the tenant. Section 44 of the Residential Tenancy Regulation states that an email is deemed served three days after it is sent. Therefore, I find the email was deemed served to the landlord on March 12, 2022.

The security deposit is held in trust for the tenant by the landlord. At no time can the landlord simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an arbitrator, or the written agreement of the tenant. In the matter before me, I find the landlord did not have any authority under the Act to keep any portion of the security deposit and did not return the security deposit to the tenant within 15 days of March 12, 2022, in accordance with the Act.

Section 38(6) of the Act states that if a landlord does not comply with section 38(1), the **landlord must pay the tenant double the amount of the security deposit**. The legislation does not provide any flexibility on this issue. Given the above, I find the landlord breached section 38(1) of the Act as the landlord failed to return the $600 security deposit or file and application within the latter date of March 12, 2022. Consequently, I find the landlord must pay the tenants double the $600 security deposit in the amount of **$1,200.**

As the tenant's application was fully successful, I grant the tenant **$100** for the recovery of their filing fee pursuant to section 72 of the Act.

I find the tenant has established a total monetary claim of **$1,300**, comprised of the doubled $600 security deposit, which is $1,200 plus the $100 filing fee. Pursuant to section 67 of the Act, I grant the landlord a monetary order in the amount of **$1,300.**

Conclusion

The tenant's application is fully successful.

The landlord breached section 38(1) of the Act.

The landlord owes the tenant $1,300 effective immediately. The tenant is granted a monetary order in the amount of $1,300. This order must be served on the landlord, with a demand for payment letter and if the landlord fails to pay, the tenant may file the monetary order in the Provincial Court (Small Claims) to be enforced as an order of that court.

I caution the landlord that they can be held liable for all costs related to the enforcement of the monetary order, including but not limited to court costs.

This decision will be emailed to both parties. The monetary order will be emailed to the tenant only for service on the landlord.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 7, 2022

Residential Tenancy Branch