

DECISION

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 the tenant's Application for Dispute Resolution (the Application) for:

- a Monetary Order for the return of all or a portion of their security deposit pursuant to sections 38 and 67 of the Act (\$1,150.00)
- authorization to recover the filing fee for this application from the landlord pursuant to section 72 of the Act (\$100.00)

Service of Notice of Dispute Resolution Proceeding - Direct Request

The tenant submitted a copy of a Proof of Service Tenant's Notice of Direct Request Proceeding form which declares that on December 9, 2022 they served the landlord the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) by registered mail. The tenant provided a copy of the Canada Post registered mail receipt containing the tracking number to confirm this service. In accordance with sections 89(1) and 90 of the Act and based on the written submissions and evidence of the tenant:

- I find that the tenant served the Proceeding Package to landlord R.G. on December 9, 2022 by registered mail, and it is deemed to have been received by the landlord on December 14, 2022, the fifth day after it was mailed.

Issues to be decided

Is the tenant entitled to a Monetary Order for the return of all or a portion of their security deposit? (\$1,150.00)

Is the tenant entitled to recover the filing fee for this application from the landlord? (\$100.00)

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 evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord on August 22, 2022, indicating a monthly rent of \$2,300.00, and a security deposit of \$1,150.00, for a tenancy commencing on September 1, 2022;
- A copy of a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit form signed by the tenant on October 6, 2022;
- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form (Proof of Service of the Forwarding Address) which indicates that the forwarding address was sent to the landlord by registered mail on October 6, 2022;
- A copy of a Canada Post Customer Receipt containing the tracking number to confirm the forwarding address was sent to the landlord on October 6, 2022;
- A copy of the Canada Post tracking report showing that the forwarding address was delivered to the landlord on October 16, 2022; and;
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposit paid by the tenant, requesting the full amount to be returned, and indicating the tenancy ended on September 29, 2022.

Analysis

Is the tenant entitled to a Monetary Order for the return of all or a portion of their security deposit?

Section 38(4) allows a landlord to retain from a security deposit if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain an amount to pay a liability or obligation of the tenant.

If the landlord does not have the tenant's agreement in writing to retain all or a portion of the security deposit, section 38(1) of the Act stipulates that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay the security deposit or make an application for dispute resolution claiming against the security deposit.

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

I have reviewed all documentary evidence and I find that the tenant paid a security deposit in the amount of \$1,150.00, as per the tenancy 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 security deposit;
- There are no outstanding Monetary Orders against the tenant for this tenancy; and
- The tenant has not extinguished their right to the security deposit in accordance with sections 24(1) and 36(1) of the Act.

I accept the tenant's statement on the Tenant's Direct Request Worksheet that the tenancy ended on September 29, 2022.

In accordance with section 88 of the Act, I find that the forwarding address was served to the landlord on October 6, 2022 and was received by the landlord on October 16, 2022.

I accept the evidence before me that the landlord has failed to return the security deposit to the tenant and has not filed an Application for Dispute Resolution requesting to retain the security deposit by October 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 with section 38(6) of the Act.

Therefore, I find that the tenant is entitled to a monetary award in the amount of \$2,300.00, for double the security deposit pursuant to section 38 of the Act.

Is the tenant entitled to recover the filing fee for this application from the landlord?

As the tenant was successful in their application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application pursuant to section 72 of the Act.

Conclusion

I grant the tenant a Monetary Order in the amount of **\$2,400.00** 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: January 30, 2023

Residential Tenancy Branch