



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for the return of her security deposit pursuant to section 38.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:56 pm in order to enable the landlord to call into the hearing scheduled to start at 1:30 pm. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes 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.

The tenant testified that her friend, served the landlord with the notice of dispute resolution package and supporting documentary evidence on July 14, 2022 by dropping it off with the receptionist at the offices of the property management company he works for. This is a permitted mode of service pursuant to section 89(1)(b) of the Act.

Preliminary Issue – Identity of Landlord

The tenant testified that she has never met the current owner of the rental unit, that the rental unit is administered by a property management company, and that her property manager is the individual named as landlord on this application ("**MH**").

Section 1 of the Act defines "landlord" as:

"**landlord**", in relation to a rental unit, includes 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;

As MH is a person who exercises powers and performs duties under the Act, I find that he meets the definition of "landlord". As such, he is permitted to be named as a party to this application.

Issue to be Decided

Is the tenant entitled to the return of her security deposit?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The tenant moved into the rental unit on September 10, 2014. At that time her landlord was "DP". Monthly rent was \$750 and she paid DP a security deposit of \$375. At some point in 2016 DP sold the residential property in which the rental unit is located 2 BR and JR. The tenant testified that BR and JR raise to rent to \$765 per month and collected a security deposit of \$325. In support of these amounts the tenants submitted two "shelter information" forms which explicitly state that they are "not a tenancy agreement". She also submitted two repayment agreements from the Ministry Of Social Development And Social Innovation which confirm that she paid the two deposits.

At some point later BR and JR Sold the residential property to the current owner, from the tenant only knows as "Jay". She testified that the tenancy is administered by MH and that she does not have any contact with Jay.

The tenant vacated the rental unit on August 14, 2021.

the tenant testified that she was never asked to conduct a move in condition inspection at the start of the tenancy and that she was never asked to conduct a move out condition inspection at the end of the tenancy. She testified that MH simply attended the rental unit and retrieved the keys.

On June 2, 2022 the tenant left a letter with MH's receptionist at his office providing him with her forwarding address and asked for the return of both deposits, totaling \$700.

To date, the landlord is not returned any part of the security deposit to the tenant. The tenant testified that the landlord did not make any application against her, claim to keep all or a part of the security deposits.

Analysis

I accept the tenant's testimony, corroborated by the documentary evidence, that she paid two previous landlords a combined \$700 in security deposits. I accept her testimony that neither of these deposits were returned to her.

The sale of a rental unit does not have the effect of ending a tenancy. The tenancy continues, and the tenancy agreement is assigned (either explicitly or implicitly) from the

seller to the purchaser. As the tenancy does not end, there is no requirement for a seller to return a deposit to the tenancy and for the purchaser to collect a new deposit. The deposit must be transferred from the seller to the purchaser. I cannot say of this happened when DP sold the rental unit to BR and JR, or when BR and JR sold it to Jay. However, this is not relevant to the tenant's application, as the *obligation* to return the tenant's security deposits at the end of the tenancy transferred from DP to BR and JR to Jay, even if the deposits themselves did not.

Accordingly, I find that the tenancy agreement came into existence when the tenant moved into the rental unit on September 10, 2014 and continued until the tenant vacated rental unit on August 14, 2021. I do not find that the second "shelter agreement" amounted to a new tenancy agreement. It explicitly says that it is *not* a tenancy agreement, and the tenant already had an ongoing tenancy at the time it was entered into.

Section 38(1) of the Act states:

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.

Based on the testimony of the tenant, I find that the tenancy ended on August 14, 2021 and that she provided her forwarding address in writing to the landlord on July 2, 2022.

I find that the landlord has not returned the security deposit to the tenant or an application for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding address from the tenant, or at all.

Accordingly, the landlord has failed to comply with his obligations under section 38(1) of the Act.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

- (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.

The language of section 38(6)(b) is mandatory. As such, even though the tenant has only applied for the return of full amount of the security deposits, as she has not explicitly waived her right to collect double the security deposits, I must order that the landlord pay the tenant double the amount of the security deposits (\$1,400).

Conclusion

Pursuant to section 65 of the Act, I order that the landlord pay the tenant \$1,400, representing an amount equal to double the security deposits.

I order the tenant to serve the landlord with a copy of this decision and the attached monetary order in accordance with section 88 of the Act.

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: March 20, 2023

Residential Tenancy Branch