



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application by the tenant filed under the Residential Tenancy Act (the “Act”) for a monetary order for return of the security deposit and to recover the filing fee for the claim.

The tenant attended the hearing. As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant testified that the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on December 18, 2014, a Canada post tracking number was provided as evidence of service. The Canada post history indicated the item was unclaimed by the recipient.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later.

Residential Tenancy Policy Guideline #17 states,

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed.

I find that the landlord has been duly served in accordance with the Act.

The tenant appeared, gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the tenant entitled to a monetary order for return of the security deposit?

Background and Evidence

The tenancy began on August 1, 2010. Rent in the amount of \$700.00 was payable on the first of each month. A security deposit of \$350.00 was paid by the tenant.

The tenant testified that they vacated the premises on August 30, 2014. The tenant stated that they provided the landlord with a written notice of the forwarding address by letter dated November 28, 2014, which was sent by registered mail and was successfully delivered on December 1, 2014. Filed in evidence is a copy of the letter, a copy of the Canada post track history, which supports the tenant's testimony.

The tenants stated they did not authorize the landlord to retain any amount from the security deposit and there were no previous orders made that authorized the landlord to retain any amount from the security deposit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

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.

[Reproduced as written]
[my emphasis added]

In this case, the evidence supports the landlord received the tenant's forwarding address on December 1, 2014. The landlord did not return the security deposit to the tenant within 15 days and there was no evidence that the landlord had applied for arbitration, within 15 days as required by the Act.

I find the landlord has breached 38(1) of the Act. The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to 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. Here the landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the landlord was not entitled to retain any portion of the security deposit.

Section 38(6) provides 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.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pays the tenant the sum of \$750.00, comprised of double the security deposit on the original amounts held (\$350.00) and to recover the \$50.00 fee for filing this application.

The tenant is given a formal monetary order pursuant to 67 of the Act, in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court.

Conclusion

The tenant's application for return of the security deposit is granted. The tenant is granted a monetary order in the above noted amount.

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 24, 2015

Residential Tenancy Branch

