Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FF

Introduction

This hearing was convened in response to an application by the tenant for a monetary order for the return of the security deposit and compensation of double the deposit pursuant to Section 38 of the Act. The application is inclusive of an application for recovery of the filing fee.

I accept the tenant's evidence that despite the landlord having been served by *registered mail* in accordance with Section 89 of the Residential Tenancy Act (the Act) with their application, hearing documents and evidence, the landlord did not participate in the conference call hearing. The tenant provided evidence they served the landlord by registered mail and that it was accepted by the landlord on June 01, 2018. The tenant was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary matters

The tenant testified that from the day they met the landlord the landlord represented themselves to the tenant by the name the tenant used to file their application May 18, 2018 (DC). The tenant subsequently realized the landlord had written a similar name for themselves (landlord) on the tenancy agreement as DCV. Therefore several days later the tenant obtained advice from a representative of the Branch to complete an *Amendment to an Application form* to correct or amend the name. The tenant testified they were advised by the representative to send the landlord the original Notice of Dispute Resolution Proceeding document together with the *Amendment to an Application form* attached. The tenant testified they followed the instructions. The tenant highlighted the evidence that they sent the registered mail to the landlord addressed to the name on the tenancy agreement (DCV) and it was received and signed by them(DCV) on June 01, 2018.

I found that the tenant provided sufficient evidence that DC and DCV are the names of

one and the same individual. I found it does not prejudice the landlord to amend the *style of cause* adding the additional name for the landlord (DCV) as their alias. I found there is no need for further revision of the Application for Dispute Resolution nor the need for additional service of the Application for Dispute Resolution as the 2 names are of the same individual, and I am satisfied the individual has been apprised of the application and the case against them.

Issue(s) to be Decided

Is the tenant entitled to the monetary amount claimed of double the security deposit?

Background and Evidence

The undisputed facts before me are as follows. The tenancy began November 01, 2017 and the tenant testified that it ended March 31, 2018. At the outset of the tenancy the landlord collected a security deposit of $800.00 which they retain it in trust. There was no *move in* or *move out* inspections conducted by the landlord in accordance with the Act. The tenant provided an incomplete condition inspection report addressing the the landlord had

The tenant testified that on May 01, 2018 they sent the landlord a forwarding address via a text message which they submitted a copy into evidence. The tenant testified the landlord acknowledged receiving the forwarding address as stated within that text message.

Analysis

The burden of proof in this matter lies with the applicant. On preponderance of the evidence and on the balance of probabilities, I have reached a decision.

Section 38 of the Act provides, in part, as follows **(emphasis added)**

> **38**(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> 38(1)(a) the date the tenancy ends, and
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> 38(1)(b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord **must** do one of the following:
>
> 38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

and

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) **may not make a claim** against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double** the amount of the security deposit, pet damage deposit, or both, as applicable.

In this matter I find the tenant did not provide the landlord with their forwarding address *in writing* as is required by the Act. The Act does not recognize a text message as a method of providing a document or service in accordance with the Act; and, the deeming provisions of Section 90 of the Act do not apply to text messaging. In the absence of the landlord's verification it is not conclusive the landlord received the text. Effectively, I find the tenant did not provide the landlord with their forwarding address in accordance with Section 38(1)(b) in order to trigger the doubling provisions of Section 38(6). Therefore, the tenant is not entitled to double the original amount of the deposit. None the less, relevant portions of **Sections 24 and 36** of the Act state: **(emphasis added)**

Consequences for tenant and landlord if report requirements not met

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property **is extinguished** if the landlord

(a) does not comply with section 23 (3) *[2 opportunities for inspection]*,

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Consequences for tenant and landlord if report requirements not met

36 (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property **is extinguished** if the landlord

(a) does not comply with section 35 (2) *[2 opportunities for inspection]*,

(b) having complied with section 35 (2), does not participate on either occasion, or

> (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The undisputed evidence is that the landlord did not complete a *move in* or *move out* condition inspection in concert with the requirements of the Act therefore their right to make a claim against the security deposit was extinguished and they were precluded from making a claim against the security deposit, even if the tenant had provided the landlord the forwarding address as prescribed by the Act.

Therefore, as the landlord's right to claim against the deposit is extinguished it is appropriate based on the application of the tenant for the return of the deposit that I Order the landlord to return the original deposit to the tenant in the full amount of $800.00. The tenant is further entitled to recover the $100.00 filing fee for this application for a total award of **$900.00.**

Conclusion

The tenant is granted a **Monetary Order** under Section 67 for the sum of **$900.00**. If the landlord does not satisfy this amount, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding.

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: November 07, 2018

Residential Tenancy Branch