



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT

Preliminary Issue – Rescheduling of this Hearing

I note that this hearing was originally scheduled for November 9, 2018 at 1:30 p.m. On the morning of November 9, 2018, the Residential Tenancy Branch decided to reschedule this hearing to November 15, 2018 at 11:00 a.m. and made efforts to contact parties to inform them of the rescheduled date and time. Therefore, the service of documents, referenced in the “Introduction” section of this Decision, pertains to the original Notice of Dispute Resolution Proceeding package documents provided to the applicant for the November 9, 2018 hearing and were required to be served on the respondent by the applicant, whereas it is the Residential Tenancy Branch’s responsibility for providing notice of a rescheduled hearing to a respondent.

Introduction

This hearing dealt with the tenant’s application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- the return of the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:25 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

As the landlord did not attend the hearing, I asked the tenant to confirm that he had served the landlord with the Notice of Dispute Resolution Proceeding for the originally scheduled hearing of November 9, 2018. The tenant testified that he served the landlord with notice of the originally scheduled hearing by Canada Post registered mail on August 3, 2018, and provided a Canada Post registered mail tracking number as proof of service, which I have noted on the cover sheet of this decision. With the tenant's consent, during the hearing I accessed the Canada Post website to confirm that the notice of the originally scheduled hearing was delivered to the landlord. As such, I find that the landlord was served with the notice of the originally scheduled hearing in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit? If so, is the tenant entitled to a monetary award equivalent to the value of the security deposit because of the landlord's failure to comply with section 38 of the *Act*?

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

The tenant submitted a copy of the written tenancy agreement into evidence. In the absence of the landlord attending the hearing, the tenant provided the following unchallenged testimony regarding the tenancy agreement:

- This month-to-month tenancy began on April 22, 2018.
- Monthly rent of \$870.00 was payable on the first day of the month.
- The tenant paid a security deposit of \$435.00 at the beginning of the tenancy, which the landlord continues to hold.
- On May 17, 2018, via text message, the tenant gave notice to the landlord to end the tenancy effective May 31, 2018.
- The tenant moved out and provided vacant possession of the rental unit to the landlord on May 22, 2018.

- The tenant testified that he did not provide the landlord with written authorization to retain part or all of the security deposit.

The tenant testified that he did not provide the landlord with his forwarding address in writing, but instead requested that the landlord return his security deposit via e-transfer and provided the landlord with his email address.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the end of a tenancy or upon receipt of the tenant's forwarding address in writing, whichever is later.

Where a tenant seeks the return of the security deposit, the tenant bears the burden to prove when and how a written forwarding address was given to the landlord since a landlord is not required to take action with respect to the security deposit unless a written forwarding address is received from the tenant.

In this case, the tenant confirmed that he did not provide the landlord with his forwarding address in writing, rather he provided the landlord with his email address.

However, the tenant's Application for Dispute Resolution, contained in the Notice of Dispute Resolution Proceeding package for this hearing, that was served upon the landlord by registered mail on August 3, 2018, contains an "Address for Service of Documents" for the tenant. The tenant confirmed during the hearing that the address provided in his application for dispute resolution is an address at which he can receive documents. For clarity, I have noted the tenant's address for service on the cover sheet of this Decision. Accordingly, I deem the landlord to be in receipt of a written forwarding address for the tenant as provided in the tenant's Application for Dispute Resolution sent to the landlord by the tenant via registered mail on August 3, 2018.

As such, I find the tenant's Application to recover the security deposit is premature and the landlord may still return the tenant's security deposit in accordance with the provisions of section 38 of the *Act*. Given this finding, I do not find that the tenant is entitled to the recover the filing fee for this application from the landlord.

To clarify, this means that the landlord has 15 days from the deemed receipt date of this decision to return the tenant's security deposit. The deemed receipt date of this decision is five days from the date of this decision. The date of this decision is noted in the Conclusion section of this decision. Should the landlord fail to return the deposit within that timeline, the tenant will be at liberty to reapply for dispute resolution to claim double the amount of the security deposit pursuant to section 38(6) of the *Act*.

Conclusion

Accordingly, I dismiss the tenant's application with leave to reapply to request the return of double the security deposit, should the landlord fail to return the security deposit within 15 days of the deemed receipt date of this decision. The tenant bears the cost of the filing fee for this application.

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 21, 2018

Residential Tenancy Branch