



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CREEKSIDE VILLAGE APARTMENTS VERNON
COMMUNITY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*"). The Tenant applied for the recovery of their security deposit, for a monetary order compensation pursuant to section 38 of the *Act*, and for the return of their filing fee. The matter was set for a conference call.

The Tenant and two agents for the Landlord (the "Landlord") attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The Tenant and the Landlord testified that they received each others documentary evidence that I have before me. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Has there been a breach of Section 38 of the *Act* by the Landlord?
- Is the Tenant entitled to the return of their security deposit pursuant to section 38 of the *Act*?
- Is the Tenant entitled to monetary compensation for damages under the *Act*?
- Is the Tenant entitled to the return of their filing fee for this application?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that this tenancy began on January 1, 2020, as a month-to-month tenancy, that rent was based on income and was calculated at 30% of the Tenants monthly income. Both the Landlord and Tenant agreed that the Tenant paid the Landlord a \$309.00 security deposit at the outset of this tenancy. The Tenant submitted a copy of the tenancy agreement into documentary evidence.

The Landlord and Tenant testified that the Tenant served the Landlord with written notice to end their tenancy on April 26, 2021, and that the Tenant moved out in accordance with that written notice on May 31, 2021. Both parties agreed that the Tenant provided the Landlord with their forwarding address on the written notice to end the tenancy. The Tenant submitted a copy of their written notice to end tenancy into documentary evidence.

Both parties agreed that the end of tenancy inspection was completed in accordance with the *Act* on May 31, 2021, and that no deductions to the security deposit had been agreed to by these parties.

The Tenant testified that as of the date of these proceedings, the Landlord had not returned their security deposit to them or filed for a hearing to claim against the deposit.

The Landlord testified that they had attempted to return the security deposit to the Tenant three times. The first attempt to return the security deposit was through Canada Post regular mail sent on June 8, 2021, to the address provided by the Tenant on their notice to end the tenancy. The Landlord testified that they received this mail back from Canada Post on July 12, 2021, indicating "incorrect address/unknown". The Landlord submitted a copy of the returned mail into documentary evidence.

The Landlord testified that when they received this mail back, they called and left a voice message for the Tenant to advise them of the returned mail and get the correct mailing address, but that the Tenant never called them back.

The Landlord testified that the Tenant attended the rental property on July 19, 2021, and that they attempted to serve the Tenant with the returned mail personally but that while they were attempted to make a record of this service, the Tenant left without taking the returned mail containing the cheque for the return of the security deposit for this tenancy.

The Landlord testified that they made a third attempt to return the security deposit again through Canada Post, using registered mail sent on July 27, 2021, to the address provided by the Tenant on their application for these proceedings. The Landlord testified that they received this second mailing back from Canada Post on August 24, 2021, as unclaimed. The Landlord submitted a copy of the returned mail into documentary evidence.

The parties agreed that during the previous hearing for this application, the arbitrator in those proceedings confirmed the Tenants mailing address and recorded the correct address for legal service on the style of cause page of the Interim Decision for that proceeding. The Tenant confirmed that this is still their correct mailing address.

Analysis

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

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposits or repay the security deposit and pet damage deposit to the tenant.

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.

I accept the testimony of these parties and find that this tenancy ended on May 31, 2021, the date the Tenant moved out of the rental unit and that the Tenant provided their forward address to the Landlord in writing on April 26, 2021. Accordingly, the Landlord had until June 15, 2021, to comply with section 38(1) of the *Act* by either repaying the deposits in full to the Tenant or submitting an Application for Dispute resolution to claim against the deposits.

I accept the Landlord's testimony, supported by their documentary evidence that they did send the Tenant a cheque to return the full amount of the security deposit for this tenancy on June 8, 2021. I also accept the Landlord's testimony, supported by their documentary evidence, that the June 8, 2021 mailing was returned to the Landlord as undeliverable by Canada Post on July 12, 2021.

I find that the Landlord was in compliance with section 38 of the *Act* when they mailed the Tenant a cheque for the return of the security deposit on June 8, 2021, within the legislated timeline.

I have reviewed the forwarding address provided by the Tenant in their notice to end tenancy to the address written on the envelope provided by the Landlord, and I find these two addresses to be the same, and that it was by not the fault of the Landlord that Canada Post found the forwarding address provided by the Tenant to be invalid.

As Canada Post was not able to deliver to the forwarding address provided to the Landlord by the Tenant, I find that as of the date of these proceedings, the Tenant has still not provided the Landlord with a valid forwarding address for the recovery of their security deposit for this tenancy.

Consequently, I find that the Tenant prematurely submitted their application for these proceedings as they have still not served the Landlord with a valid forwarding address and waited the required 15 days after the service of that valid forward address before making their application. Therefore, I must dismiss the Tenant's application with leave to reapply.

However, during these proceedings, the Landlord did confirm receipt of the interim decision for the adjourned proceedings for this application that took place on January 18, 2022. I have reviewed that interim decision and noted that the Tenant confirmed their address for service of evidence during those proceedings and that the address was recorded on the style of cause page of that interim decision.

Therefore, I find that as of the date of these proceedings, the Landlord is in receipt of the Tenant's forwarding address, and I order the Landlord to either return the security deposit in full to the Tenant or make a claim against it pursuant to section 38 of the *Act*.

Accordingly, the Landlord has until March 23, 2022, to comply with section 38(1) of the *Act*. For the Landlord's reference, the Tenant's forwarding address has been recorded on the style of cause page of this decision.

As a result, the Tenant would be within their rights to apply for the return of their security deposit as of March 24, 2022, if the Landlord does not comply as ordered.

Finally, section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not been successful in this application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the Tenant's application for the recovery of their security deposit with leave to reapply.

I find that as of the date of these proceedings, the Landlord has received the Tenant's forwarding address.

I order the Landlord to make a claim against the security deposit or return the security deposit in full for this tenancy to the Tenant within 15-days of the date of this decision.

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 8, 2022

Residential Tenancy Branch