



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

The Tenant filed an Application for Dispute Resolution on July 22, 2022 seeking a return of their security deposit, other monetary compensation and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 24, 2023.

The Tenant and the Landlord each attended the hearing.

Preliminary Matter – Notice of Dispute Resolution Proceeding and evidence to Landlord

In the hearing, the Tenant stated they provided the Notice of Dispute Resolution Proceeding to the Landlord via registered mail, as well as placing a copy in the Landlord’s mailbox. This was in August, after a Direct Request procedure at the Residential Tenancy Branch issued this document to the Tenant on August 10. The Tenant stated they had a registered mail receipt and confirmed the details on that receipt during the hearing. That was a package sent via registered mail to the Landlord on August 12, 2022, at 9:45am as shown on that receipt.

The Tenant stated this package contained the evidence they prepared for this hearing.

The Landlord confirmed they received information about this hearing from the Tenant. I accept the Landlord’s statement “I guess so” as confirmation of this service. Because of this confirmation, I give the Tenant’s evidence and submissions full consideration in this hearing because they duly served it to the Landlord and provided it to the Residential Tenancy Branch in a timely manner.

Preliminary Matter – issues for dispute resolution

I find the Tenant made two indications on their Application: that of a return of the security deposit in full, and compensation for monetary loss. I find that the Tenant's submissions and evidence concern only the security deposit and its return; my consideration in this decision is based on s. 38 of the *Act*, and this is the single key issue under consideration, listed below.

I amend the Tenant's Application to sever the secondary ground of money owed. I consider any doubling of the security deposit to be a key issue in my analysis of the applicability of s. 38 of the *Act*, as set out below.

Issues to be Decided

Is the Tenant entitled to a refund of the security deposit pursuant to s. 38 of the *Act*?

Is the Tenant entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant did not provide a copy of the tenancy agreement they had with the Landlord. At the start of this hearing, I confirmed basic details: the tenancy started in "late June or early July 2017"; the basic rent amount of \$1,600 did not increase over the course of this tenancy; the Tenant paid a security deposit of \$800.

The tenancy ended on May 31, 2022 after the Landlord initiated an end-of-tenancy process. The Landlord served a Two-Month Notice to End Tenancy for Landlords Use of Property on February 28, 2022. This set the original move-out date of April 31, 2022; however, as stated by the Tenant, they challenged this process and set an agreement with the Landlord that the end-of-tenancy date would be May 31, 2022.

The Tenant stated that they met with the Landlord on May 31 to review the condition of the rental unit. The Landlord refused to return the security deposit at that time without a forwarding address in place from the Tenant. In their evidence the Tenant provided a copy of the Residential Tenancy Branch form #47, specifically for that purpose. They signed the form on June 6, 2022, giving an address that belonged to another family member.

The Tenant also completed a document to attest to their service of that document #47. They indicated on this form that they completed service on June 11 at 8:52am. This was the

Tenant's second attempt at service, and they completed this by leaving it in the mailbox at the Landlord's address.

The Landlord apparently refused registered mail the Tenant used for this purpose previously, as shown by the envelope (showing postage paid on June 7, 2022) and registered mail record they provided in their evidence, showing refusal by the recipient (*i.e.*, the Landlord) on June 10, 2022.

In the hearing the Landlord presented that the Tenant gave an incorrect forwarding address. That was an address "4503", which simply does not exist. The post office confirmed this with the Landlord as they recalled in the hearing. With an incorrect address, the Landlord did not forward on the security deposit.

In response to this, the Tenant maintained that they provided the address "4305", which was indeed the correct forwarding address.

In the week prior to the hearing, the Landlord visited the street address 4305, and the resident in that home told the Landlord that the Tenant does not reside there. To clarify this matter in the hearing, the Tenant stated the address belonged to another family member, and they used this address as a forwarding address at the end of the tenancy.

The Landlord also presented that they feel money is owing from the Tenant because of the state of the rental unit as of the end of tenancy. The Landlord asked that I look at the Tenant's rental unit photos closely, to in fact see that there was damage in the rental unit. The Landlord mentioned they had sent a registered letter to the Tenant previously for the purpose of claiming compensation for damage; the Tenant recalled this letter was "a mock-up of a tenancy agreement".

Analysis

From the evidence presented by the Tenant, I am satisfied a tenancy agreement between the parties was in place. The amount of security deposit was not disputed by the Landlord; I find that amount was \$800.

The *Act* s. 38(1) states that within 15 days after the later of the date the tenancy ends, or the date a landlord receives a tenant's forwarding address in writing, that landlord must repay any security or pet damage deposit to that tenant or make an Application for Dispute Resolution for a claim against any deposit.

Further, s. 38(6) of the *Act* provides that if a landlord does not comply with subsection (1), a landlord must pay the tenant double the amount of the security and pet damage deposit.

From the evidence presented by the Tenant, I find they provided their forwarding address to the Landlord on June 7, 2022. Allowing for 5 days' service because of registered mail as per s. 90(a), I find the information was deemed served to the Landlord on June 12, 2022. The Landlord refused the registered mail service; however, that shall not act to the detriment of the Tenant in this instance.

The Landlord subsequently objected to the address as set on the form #47 as used by the Tenant. This is immaterial where the *Act* s. 38(b) specifies a forwarding address *only*. The Landlord incorrectly read the address on the form as "4503" – on my review the form clearly sets out "4305". This delayed the process of the Landlord correctly dealing with the Tenant's security deposit.

It was not until one week prior to the hearing that the Landlord set out to verify that the Tenant did not reside at that forwarding address. This also is immaterial. There is no authority in the *Act* for a landlord to verify a forwarding address as that where a tenant actually resides. This does not preclude the Tenant's right to the return of the deposit.

The Landlord spoke to the condition of the rental unit after the Tenant moved out. The Landlord did not make a claim for compensation against the deposit within 15 days of receiving the Tenant's forwarding address. Nor did they return the deposit to the Tenant as the *Act* requires. This constitutes a breach of s. 38(1); therefore, s. 38(6) applies, and the Landlord must pay double the amount of the security deposit. This is \$1,600 to the Tenant.

As the Tenant was successful in this Application, I find the Tenant is entitled to recover the full amount of the Application filing fee they paid for this Application.

Conclusion

Pursuant to s. 38(6) and s. 72 of the *Act*, I grant the Tenant a Monetary Order for \$1,700. I provide the Tenant this Monetary Order and they must serve it to the Landlord as soon as possible. Should the Landlord fail to comply with this Order, the Tenant may file it in the Small Claims Division of the Provincial Court where it will be enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: March 27, 2023