



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, O

Introduction

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

- authorization to obtain a return of all or a portion of his security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord confirmed that on February 28, 2014, the tenant handed him a written notice to end his tenancy by March 31, 2014. The landlord also confirmed that on April 23, 2014, he received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on April 22, 2014. I am satisfied that the tenant served the landlord with the above documents in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of his security deposit? Is the tenant entitled to a monetary award equivalent to the amount of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began as one-year fixed term tenancy on January 15, 2011. At the expiration of the first term, the tenancy converted to a periodic tenancy until the tenant vacated the rental unit on March 31, 2014. Monthly rent was set at \$1,200.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$300.00 security deposit paid on or about January 15, 2011.

The tenant application for a monetary award of \$300.00 sought the return of his security deposit, plus the recovery of his filing fee.

The landlord testified that he did not return the tenant's security deposit because the tenant had caused damage from the bathroom toilet which resulted in \$1,474.00 in repairs. The landlord testified that he had not applied for authorization to retain the tenant's security deposit, nor had he applied for a monetary award for damage arising out of this tenancy. The landlord confirmed that he received the tenant's forwarding address in writing on February 28, 2014.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the security deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, the landlord had 15 days after March 31, 2014 to take one of the actions outlined above.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." As there is no evidence that the tenant has given the landlords written authorization at the end of this tenancy to retain any portion of his security deposit, section 38(4)(a) of the *Act* does not apply to the tenant's security deposit.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. The tenant gave sworn oral testimony that he has not waived his right to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the value of his security deposit with interest calculated on the original amount only. No interest is payable. Having been successful in this application, I find further that the tenant is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I allow the tenant's application and issue a monetary Order in the tenant's favour under the following terms, which allows the tenant to recover double the value of his security deposit plus the recovery of his filing fee:

Item	Amount
Return of Security Deposit	\$300.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	300.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$650.00

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: August 13, 2014

Residential Tenancy Branch

