



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RAAMCO INT'L PROPERTY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This review hearing was convened in response to an application from the tenant pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of double the amount of the security or pet deposit, pursuant to section 38 of the *Act*,
- for a monetary order pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Only the tenant, and her witness (the co-tenant), T.B. appeared at the hearing. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant explained that the application for dispute was served in person to the landlord on October 25, 2017. Pursuant to sections 89 & 90 of the *Act*, I deem the landlord served with the Notice of Hearing, on the same day as its service, October 25, 2017.

Following opening remarks, the tenant explained that she wished to amend her application to lower the amount sought in her monetary award. The tenant explained that some funds had subsequently been returned and she was only seeking \$450.00, along with a return of the filing fee. Pursuant to section 64(3)(c) of the *Act*, the tenant's application for a monetary award is amended to reflect this request.

Issue(s) to be Decided

Is the tenant entitled to a monetary award?

Can the tenant recover the filing fee?

Background and Evidence

The tenant provided undisputed testimony that the tenancy in question began on August 15, 2016 and ended on August 31, 2017. Rent was \$915.00 per month, and security and pet deposits of \$450.00 each were collected at the outset of the tenancy.

The tenant explained during the hearing that she provided her forwarding in writing to the landlord on August 31, 2017. The tenant's evidentiary package included a copy of the condition inspection report completed by the parties on August 31, 2017. This document showed that the address was given to the landlord on the date noted above and was included with the condition inspection report. The tenant said that she did not give the landlord permission to withhold any part of her security or pet deposit following conclusion of the tenancy and did not agree to surrender any amount of either deposit for damage or repairs required in the rental unit.

Oral testimony provided by the tenant and her witness, noted that they contacted the landlord regarding the landlord's failure to return either deposit to them following conclusion of the tenancy. On October 5, 2017 the tenant was sent a cheque for \$450.00 representing the return of one of their deposits. On October 19, 2017 the tenant filed for dispute resolution, to recover the remaining deposit. On October 25, 2017 the tenant served the landlord with the application for dispute, and then on November 7, 2017 the landlord sent the tenant a cheque for \$900.00 representing a doubling of one of the deposits.

The tenant is seeking \$450.00 in satisfaction for a doubling of the deposit that was returned on October 5, 2017, along with a return of the filing fee.

Analysis

Section 38 of the *Act* requires the landlord to either return a tenant's security or pet deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the *later* of the end of a tenancy and, or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord **is required to pay** a monetary award, pursuant to section 38(6)(b) of the *Act*, **equivalent to double** the value of the security or pet deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security

deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

No evidence was produced at the hearing that the landlord applied for dispute resolution within 15 days of receiving a copy of the tenant's forwarding address on August 31, 2017, or following the conclusion of the tenancy on the same date. If the landlord had concerns arising from the damages that arose as a result of this tenancy, the landlord should have applied for dispute resolution to retain the security or pet deposits.

Pursuant to section 38 of the *Act*, I find that the tenant is entitled to a monetary award of \$450.00 representing the amount outstanding on the deposit returned to her on October 5, 2017.

As the tenant was successful in her application, she may recover the \$100.00 filing fee associated with this application.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$550.00 against the landlord. The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 30, 2018

Residential Tenancy Branch