



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This is an Application for Dispute Resolution (“Application”) by the Tenant for a return of the security deposit and for payment of the filing fee.

The Landlord and the Tenant appeared for the scheduled hearing. I find that the notice of hearing was properly served on the Landlord in person on October 16, 2017 and that evidence was submitted and served by all parties in accordance with the legislation. Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

Issue(s) to be Decided

Should the Tenant receive the security deposit, pursuant to section 38 of the *Residential Tenancy Act* (the “Act”)?

Is the Tenant entitled to payment of the \$100.00 filing fee, pursuant to section 72 of the Act?

Background and Evidence

The tenancy began on November 10, 2016 as a fixed term tenancy for one year. The Tenant agreed to pay rent on the first of the month in the amount of \$1,200.00, along

with a \$600.00 security deposit. Despite this being a fixed term tenancy with an end date of November 10, 2017 the parties agreed the tenancy ended when the tenant vacated the rental unit before September 1, 2017.

The Tenant states that she provided her forwarding address in a letter delivered to the Landlord on September 5, 2017 and that she has requested the return of her security deposit of \$600.00; the Landlord did not dispute this. The Tenant argues that she has not received her security deposit nor a notice of an application by the Landlord to retain her money, and therefore she is entitled to double the amount of the security deposit, in the amount of \$1,200.00.

Analysis

The Tenant argues that she may be entitled to double her security deposit as the Landlord failed to make a claim for the deposit within the required time. Section 38 of the Act states:

“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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection]....

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

*(b) **must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.***

[bolding added]

I find that the Landlord had written notice of the Tenant's forwarding address as of September 5, 2018 and again when the Notice of Hearing was served upon her on October 16, 2017.

The Landlord failed to return the security deposit within 15 days of that date and did not file an application to retain the security deposit. Accordingly, the Tenant is entitled to receive double the amount of her security deposit, in the sum of \$1,200.00. As the Tenant was successful in her claim, I am awarding her the filing fee of \$100.00.

This order must be served on the Landlord and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Landlord fails to make payment. Copies of this order are attached to the Tenant's copy of this Decision.

Conclusion

The Landlord shall pay to the Tenant the sum of \$1,300.00 forthwith.

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 11, 2018

Residential Tenancy Branch