



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD MNDC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on May 17, 2018. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for the return of the security deposit;
- A monetary order for compensation for loss or other money owed; and,
- Recovery of the cost of the filing fee.

The Tenant was represented at the hearing by an Agent (referred to as the Tenant). The Landlord did not attend the hearing. The Tenant testified that he sent a copy of the Notice of Hearing along with supporting documentary evidence to the Landlord by registered mail on October 15, 2017. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 5 days later. I find the Landlord is deemed to have received this package on October 20, 2017.

The Tenant stated that the one document he served with the application package in October of 2017 was his document titled "Tenant explanation and evidence – November 2017". During the hearing, the Tenant was unable to confirm if he also served his monetary order worksheet to the Landlord. Although the Tenant uploaded the monetary order worksheet for me to see, I will not consider this information as he was unclear and uncertain as to whether this worksheet was included in the package he presented to the Landlord in October of 2017. I find the monetary order worksheet was not served to the Landlord in accordance with the rules of procedure and I will not be considering it further.

The Tenant was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence 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.

Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlord pay double the security deposit, pursuant to section 38 of the Act?
2. Is the Tenant entitled to compensation for loss or money owed?
3. Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The Tenant stated that the tenancy ended on December 31, 2016, and since that time, the parties have had several hearings for a variety of issues. The Tenant stated that at a previous hearing, an order was made for the Landlord to return the security deposit in the amount of \$1,000.00. The Tenant provided a copy of that decision and order (and cited all the other related cases to date), included in his evidence package, which highlights the following:

- A hearing was held on September 19, 2017. In the September 19, 2017, hearing the Landlord requested to keep the security deposit to offset cleaning costs and this was not allowed because the Arbitrator did not find the amounts to be reasonable. The Landlord was ordered to return the Tenant's security deposit.
- Previous to the September 19, 2017 hearing, the Tenant had applied to have the deposit returned to her but that Arbitrator determined that the Tenant had not provided the forwarding address in writing at that point and the application was premature. In that Arbitrator's decision, he found that the Landlord received the Tenant's forwarding address in writing as of the time of that hearing, which was April 3, 2017.
- The Tenant's application to receive double to security deposit would be heard at a future hearing.

The Tenant stated that even after getting a monetary order for the return of the security deposit at his September 2017 hearing, it has been difficult to recover the money. Given all of the time, effort, and costs that have been incurred over the past year or so, the Tenant is looking to recover \$1,000.00, plus \$100.00 for the filing fee for this application. In the Tenant's written statement provided into evidence, it is stated that the Tenant is looking for \$1,000.00 in compensation for all the "money, expense, time, energy, paperwork, evidence, etc."

In addition to the above noted request for compensation, the Tenant is also seeking double the security deposit (\$2,000.00). The Tenant also stated that the Landlord returned the original deposit of \$1,000.00 on October 20, 2017, but she is still seeking another \$1,000.00 because the Landlord should have to pay \$2,000.00 (double the security deposit) for his failure to deal with the security deposit in accordance with section 38 of the Act.

In total, the Tenant is seeking to get \$2,100.00 from today's hearing - \$1,000.00 because the Landlord should have to pay double the security deposit, plus \$1,000.00 for compensation for

time, energy and expense involved in getting the actual deposit back (plus \$100.00 for this application fee).

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

Section 38(1) of the *Act* requires a Landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a Tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a Landlord fails to do one of these two things, section 38(6) of the *Act* confirms the Tenant is entitled to the return of double the security deposit.

In this case, I note that at a previous arbitration hearing, the Landlord was deemed to have been served with the Tenant's forwarding address in writing on April 3, 2017, and it was determined that the Tenant's forwarding address had not been provided up until that point. After reviewing the file, I note the Landlord filed his application against the security deposit on April 18, 2017. This application to retain the security deposit was made within the allowable 15 day window for making an application, after receipt of the Tenant's forwarding address. As such, I find the Tenant is not entitled to double the security deposit, given that the Landlord did not breach section 38(1) of the *Act*. I note the Landlord has already returned the Tenant's security deposit in the amount of \$1,000.00. The Tenant's application on this point is dismissed, without leave to reapply.

Next, I turn to the Tenant's request to obtain compensation all the "money, expense, time, energy, paperwork, evidence, etc." However, I find the Tenant has not sufficiently explained how the amount of \$1,000.00 for compensation was arrived upon. It is important to note that any breakdown of costs or amounts included in the worksheet will not be considered as I am not satisfied they were served to the Landlord in accordance with the rules of procedure, or in this case at all. Without further explanation or substantiation as to why the Tenant should be entitled to these amounts, or how these amounts were calculated, I find the Tenant has not sufficiently set out her claim such that I could be satisfied that she is entitled to compensation for these amounts.

As stated above, a party that makes an application for monetary compensation against another party has the burden to prove their claim. In this case, the Tenant has failed to do so, and I dismiss the Tenant's application on this matter, without leave to reapply.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. However, since the Tenant was not successful in this application, I decline to award the recovery of the filing fee paid for this application.

Conclusion

The Tenant's application is dismissed, in full, without leave to reapply.

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 18, 2018

Residential Tenancy Branch