



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFT MNDCT MNSD

Introduction

This hearing dealt with an application by the tenant for a monetary order under the *Residential Tenancy Act* (the *Act*) for the following:

- A return of the security deposit under section 38;
- A monetary order as compensation under section 51 (2) and 67; and
- Reimbursement of the filing fee under section 72.

Both tenant and landlord attended. Both parties were given full opportunity to provide affirmed testimony, present evidence, cross examine the other party and make submissions.

The landlord acknowledged receipt of the Notice of Hearing and all evidentiary materials from the tenant. No issues of service were raised. I find the landlord was served pursuant to section 89.

Issue(s) to be Decided

Is the tenant entitled to the following:

- A return of the security deposit under section 38;
- A monetary order as compensation under section 51 (2) and 67; and
- Reimbursement of the filing fee under section 72.

Background and Evidence

The tenant provided affirmed evidence he entered into a fixed term tenancy agreement with the landlord for one year beginning September 1, 2016, converting to a month-to-month tenancy at

the end of the term. A copy of the agreement was submitted as evidence. Rent was \$1,530.00 a month payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit to the landlord of \$765.00. The tenant vacated the unit on April 31, 2018.

The tenant testified he provided his forwarding address to the landlord by email on May 6, 2018 at an email address frequently used by the landlord to communicate with the tenant. The tenant submitted a copy of the email as evidence. The landlord acknowledged receipt of the forwarding address. The landlord has not returned the deposit. The tenant has not provided written authorization to the landlord to retain the deposit.

The parties did not conduct a condition inspection on moving in or moving out.

The landlord claimed he retained the security deposit as compensation for the damage caused by the tenant to the unit. The landlord testified he has brought separate dispute resolution proceedings to address his request for a monetary order for damages.

Analysis

I have reviewed all evidence and testimony before me and will refer only the relevant facts and issues meeting the requirements of the rules of procedure.

The *Act* contains comprehensive provisions regarding security and pet damage deposits.

As stated in section 38 of the *Act*, the landlord is required to either return the tenant's security 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 receipt of the tenant's forwarding address in writing.

Section 38 states as follows:

*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.

If that does not occur, the landlord must pay a monetary award equivalent to double the value of the security deposit under section 38.

Section 38(6) states as follows:

- (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*

However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find the landlord has not brought proceedings for compensation or an application for dispute resolution claiming against the security deposit for any outstanding rent or damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I find the tenant provided the tenant's forwarding address in writing pursuant to section 38(1)(b) and did not provide consent to the landlord to keep any portion of the security deposit pursuant to section 38(4)(a).

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlord is in breach of the *Act* by failing to return the security deposit or applying for dispute resolution as required.

As the tenant is successful in this application, the tenant is entitled to reimbursement of the filing fee pursuant to section 72.

The award to the tenant is summarized as follows:

ITEM	AMOUNT
Security Deposit	\$765.00
Double the Security Deposit	\$765.00
Reimbursement of the filing fee	\$100.00
Monetary Award Tenant	\$1,630.00

The landlord submitted testimony about the condition of the rental unit needing cleaning and repair after the end of the tenancy.

The landlord is unable to make a monetary claim through the tenant's application pursuant to Rules of Procedures 2.1 which states as follows:

2.1 Starting an Application for Dispute Resolution

To make a claim, a person must complete and submit an Application for Dispute Resolution.

Therefore, the landlord must file the landlord's own application to keep the deposit within the 15 days of certain events, as explained above.

The landlord has filed a separate application for alleged damages.

However, the issue of the security deposit has now been conclusively dealt with in this hearing.

Conclusion

I order the landlord pay to the tenant the sum of **\$1,630.00** pursuant to sections 38 and 72 of the *Act*.

The landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the 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: November 13, 2018

Residential Tenancy Branch