



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT 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;
- 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 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of the security deposit because of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to reimbursement of the filing fee under section 72 of the *Act*?

Background and Evidence

The tenant provided affirmed testimony as follows. The parties entered into a residential tenancy agreement starting three years ago, although the tenant could not recall the exact starting date. The tenancy was for rent of \$980.00 a month payable on the first of each month. The tenant vacated the premises on May 12, 2018. At the beginning of the tenancy, the tenant provided a security deposit in the amount of \$490.00 which is held by the landlord except for a partial refund. On June 30, 2018, the tenant testified he received a cheque dated June 14, 2018 from the landlord in the amount of \$89.22 as partial reimbursement of the security deposit.

The tenant testified he provided a forwarding address to the landlord in writing on May 12, 2018. The landlord denied receipt of the forwarding address at that time. The tenant testified he again provided his forwarding address to the landlord on June 13, 2018; the landlord acknowledged receipt on that day.

The tenant testified he did not provide written authorization to the landlord to retain any portion of the security deposit.

The landlord stated he did not bring an application for dispute resolution. The landlord testified to cleaning expenses and damages to the unit as the reason for withholding a portion of the security deposit without the consent of the tenant.

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.

The landlord continues to hold a portion of the tenant's security deposit, totaling \$400.78.

As per section 38(6) of the Act and Residential Tenancy Policy Guideline # 17, I find that the tenant is entitled to double the amount of his security deposit of \$490.00,

totaling \$980.00, minus the \$89.22 portion already returned to him. As discussed, the landlord was not entitled to withhold \$400.78 for cleaning expenses and damages. The tenant is entitled to a monetary award of \$980.00 for this claim.

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

The payment of \$89.22 as partial return to the tenant of the security deposit is deducted from the award.

The award to the tenant is summarized as follows:

ITEM	AMOUNT
Security Deposit	\$490.00
Double the Security Deposit	\$490.00
Less partial refund	(\$89.22)
Reimbursement of the filing fee	\$100.00
Monetary Award Tenant	\$990.78

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 may still file an 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 **\$990.78** 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 19, 2018

Residential Tenancy Branch