



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing via conference call and provided affirmed testimony. The landlord did not attend. The tenant stated that the landlord was served with the notice of hearing package and the submitted documentary evidence via regular post. The landlord was given 10 minutes past the start of the scheduled hearing time to call and participate, make submissions and present evidence. After waiting 10 minutes, the hearing proceeded in the absence of the landlord. I accept the tenant's undisputed affirmed evidence that the landlord was properly served with the notice of hearing package and the submitted documentary evidence as claimed and find that the landlord is deemed served as per section 90 of the Act.

At the outset, it was clarified with the tenant that the monetary claim was for \$1,000.00 and not the \$900.00 applied for. It is detailed as:

\$100.00	Return of disputed amount withheld by the landlord for cleaning
\$800.00	Compensation, Sec. 38(6), Fail to Comply with Act
\$100.00	Recovery of Filing Fee

The hearing proceeded on this basis.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on September 3, 2017 on a fixed term tenancy ending on August 31, 2018 as per the submitted copy of the signed tenancy agreement. The tenancy ended early on April 28, 2018.

The tenant seeks a monetary claim of \$1,000.00 for:

\$100.00	Return of disputed amount withheld by the landlord for cleaning
\$800.00	Compensation, Sec. 38(6), Fail to Comply with Act
\$100.00	Recovery of Filing Fee

The tenant claims that the landlord failed to return all of the original \$800.00 security deposit paid by withholding \$100.00 and returning \$700.00 to the tenant.

The tenant stated that she provided a written request for return of the \$800.00 security deposit at first in an email on May 2, 2018 and again in a letter dated May 2, 2018 which also provides the tenant's forwarding address in a letter sent to the landlord via regular post. The tenant stated at no time permission given to the landlord to retain the \$100.00 nor is she aware of the landlord filing an application to dispute its return for a claim in damages.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security and/or pet damage deposit(s).

In this case, I accept the undisputed affirmed testimony of the tenant that the landlord withheld \$100.00 from the \$800.00 security deposit paid by the tenant without the tenant's consent or the landlord filing an application for dispute of its return within the allowed time frame. As such, I find that the tenant is entitled to the return of the original \$100.00 withheld by the landlord.

Pursuant to Section 38(6), I also find that the landlord in failing to comply with section 38 (1) of the Act by returning the complete \$800.00 security deposit or filing an application in dispute of its return is liable to an amount equal to the \$800.00 security deposit.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$1,000.00.

This order must be served upon the landlord. Should the landlord fail to comply with the 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