



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT

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 their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord testified in the hearing that she was never served with the Notice of Hearing by the tenant. The landlord had only received the tenant's evidence package. The landlord confirmed in the hearing that she still wished to proceed with the scheduled hearing, and accordingly, the hearing proceeded as scheduled to deal with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of their security deposit pursuant to section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant testified that this month-to-month tenancy began on January 22, 2019, and ended on April 1, 2019. The landlord was unable to confirm during the hearing the exact date the tenancy ended, but did not dispute the tenant's testimony during the hearing that the tenancy had ended on that date. Monthly rent was set at \$2,400.00. The tenant paid a security deposit in the amount of \$1,200.00, which the landlord still holds.

Both parties confirmed that the tenant had provided her forwarding address to the landlord by way of registered mail, which was sent on April 25, 2019. The landlord confirmed she had filed an application for dispute resolution for monetary losses associated with this tenancy, and provided the details in the hearing. The application was filed by the landlord on August 23, 2019, and the hearing is scheduled for December 23, 2019 at 1:30 p.m.

The tenant confirmed in the hearing that she had never given permission for the landlord to keep any portion of her security deposit.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the landlord had not returned the tenant's security deposit in full within 15 days of receipt of the tenant's forwarding address in writing. Although the landlord did file an application for dispute resolution, the application was not filed until August 23, 2019. The tenant gave sworn testimony that the landlord had not obtained her written authorization at the end of the tenancy to retain any portion of her security deposit.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the original security deposit. As the tenant was successful with this application, I find that the tenant is also entitled to recover the filing fee from the landlord.

Conclusion

I issue a Monetary Order in the tenant's favour under the following terms which allows the tenant to recover the security deposit retained by the landlord, plus a monetary award equivalent to the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*. The tenant is also entitled to recover the cost of the filing fee for this application.

Item	Amount
Return of Security Deposit	\$1,200.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	1,200.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$2,500.00

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this 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: September 5, 2019

Residential Tenancy Branch