



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened in response to an application from the tenant pursuant to the *Residential Tenancy Act* (“*Act*”) for:

- a return of the filing fee pursuant to section 72 of the *Act*; and
- an order directing the landlord to return the security deposit pursuant to section 38 of the *Act*.

Only the tenant appeared at the hearing. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant confirmed she was not recording the hearing pursuant to section 6.11 of the Rules of Procedure.

The tenant said she served the landlord in three different ways. On January 13, 2022, the tenant and a witness handed a copy of her application for dispute and evidence package to the landlord's daughter. The tenant testified that the daughter refused to sign for the papers and closed the door on the tenant. The tenant testified that during this same interaction, a copy of the same documents was left on the landlord's mailbox. On February 24, 2022, the tenant sent a copy of her application for dispute and evidence to the landlord by way of Canada Post Registered Mail. A tracking number for these documents was provided at the hearing.

I find that the landlord was served with both the application for dispute and the evidence pursuant to sections 88, 89 and 90 of the *Act*. The landlord is deemed served with the documents on January 16, 2022, three days after they were left on their mailbox and again on March 1, 2022, five days after they were sent by Registered Mail.

Issue(s) to be Decided

Is the tenant entitled to a return of the security deposit? If so, should it be doubled?
Can the tenant recover the filing fee?

Background and Evidence

The tenant testified that this tenancy began on December 1, 2021 and ended on December 31, 2021. Rent was \$1,400.00 per month and a security deposit of \$700.00 paid at the outset of the tenancy continues to be held by the landlord.

The tenant said she did not give the landlord permission to withhold any part of the deposit. The tenant testified that a “move-in” inspection was not performed by the parties and explained that a “move-out” inspection was completed at the conclusion of the tenancy but nothing was recorded in writing.

The tenant provided undisputed sworn testimony that a copy of her forwarding address was given to the landlord in writing on January 13, 2022 when she gave the landlord’s daughter the application/evidence package, placed it on their mailbox on the same date and again when she sent these documents by Canada Post Registered Mail on February 24, 2022.

Analysis

Section 38 of the *Act* requires a landlord to either return a 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 upon receipt of the tenant’s forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant’s written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant’s security or pet deposit if an order to do so has been issued by an arbitrator.

No evidence was produced at the hearing that the landlord applied for dispute resolution within 15 days of receiving a copy of the tenant’s forwarding address or following the conclusion of the tenancy. Further I note, there is no evidence that formal condition

inspection reports were done at the outset or conclusion of the tenancy, therefore the landlord has no recourse to apply to retain the deposit pursuant to sections 23 & 36 of the *Act*.

Pursuant to section 38(6)(b) of the *Act*, a landlord is required to pay a monetary award equivalent to double the value of the security deposit if a landlord does not comply with the provisions of section 38 of the *Act*. The tenant is therefore entitled to a monetary award in the amount of \$1,500.00, representing a doubling of the tenant's security deposit (2 x \$700.00 + return of filing fee).

As the tenant was successful in her application, she may recover the \$100.00 filing fee from the landlords.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1,500.00 against the landlord. The tenant is provided with a Monetary Order in the above terms and the landlord must be served with 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: May 11, 2022

Residential Tenancy Branch