



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for compensation for loss or damage under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

Only the tenant appeared at the hearing. The tenant provided affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The tenant testified and supplied documentary evidence that he served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on August 13, 2022, November 28, 2022 and February 8, 2023. The tenant testified that each time, the package was returned unclaimed and provide supporting documentation. Using the most recent of registered mail attempts, I find that the landlord is deemed served five days after mailing in accordance with section 89 and 90 of the Act. The hearing proceeded in the absence of the landlord.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

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

Is the tenant entitled to a monetary order for damage or loss as a result of this tenancy?

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

Background, Evidence

The tenant's undisputed testimony is as follows. The tenancy began on December 1, 2002 and ended on June 30, 2022. The tenants were obligated to pay \$2820.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1250.00 security deposit which has not been returned. The tenant testified that the landlord called the house in March 2020 and spoke to his wife asking for a rent increase of \$70.00 per month. The tenant testified that he didn't know that there was a rent freeze during the COVID pandemic. The tenant testified that his wife agreed to the rent increase and paid the additional \$70.00 per month for 21 months equalling an overpayment of \$1470.00. The tenant seeks the return of double his deposit, the overpayment of rent and the filing fee for this application.

Analysis

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

Overpayment of Rent

In the tenants own testimony he acknowledged that his wife accepted the rent increase. The tenants explicit and implied actions demonstrate that they had accepted the increase. In addition, the issue of overpayment only arose after the tenancy ended and when the tenants didn't receive their deposit. Furthermore, the tenants did not provide sufficient evidence of mitigating their loss as required under section 7(2) of the *Act*; accordingly, I dismiss this portion of their application.

Security Deposit

The tenant said he is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that 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.

And Section 38 (6) says 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.

Based on the undisputed testimony of the tenant, the documentary evidence before me and in the absence of any disputing evidence from the landlord, I find that the landlord has not acted in accordance with Section 38 of the Act and that the tenant is entitled to the return of double his deposits in the amount of \$2500.00 plus the accrued interest of \$51.84 on the original amount for an award of \$2551.84.

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

Conclusion

The tenant has established a claim for \$2651.84. I grant the tenant an order under section 67 for the balance due of \$2651.84. This order may be filed in the Small Claims 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: April 20, 2023

Residential Tenancy Branch