



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application pursuant to section 38 of the *Residential Tenancy Act* (the *Act*) for authorization to obtain a return of all or a portion of her security deposit. The landlord confirmed that she received a copy of the tenant's dispute resolution hearing package sent by registered mail on July 29, 2011. I am satisfied that the tenant served this package to the landlord in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a return of that portion of her security deposit retained by the landlord? Is the tenant entitled to a monetary award equivalent to the value of her security deposit pursuant to section 38(6) of the *Act*?

Background and Evidence

This tenancy commencing on July 1, 2002 had converted to a month-to-month tenancy by the time the tenant vacated the rental premises on June 8, 2011. Monthly rent was set at \$670.00, payable in advance on the first of each month. The tenant paid a \$310.00 security deposit when she moved into these rental premises. The landlord confirmed that she received the tenant's forwarding address in writing on June 13, 2011. After receiving this address, the parties agreed that the landlord returned \$60.00 from the tenant's security deposit and retained the remaining portion of the tenant's security deposit. The landlord submitted oral and written evidence that she took this action because there was damage arising from this tenancy.

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, to either return the deposit or file an Application for Dispute Resolution for an Order to make a claim to retain the deposit. The landlord testified that she did not apply for dispute resolution to retain any portion of the tenant's security deposit. If the landlord fails to comply with section 38(1) of the *Act*, then the landlord may not make a claim against the deposit, and the landlord **must** pay the tenant double the amount of the deposit (section 38(6)).

The following provisions of Policy Guideline 17 of the Residential Tenancy Policy Guidelines would seem to be of relevance to the consideration of this application:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;...*
- whether or not the landlord may have a valid monetary claim...*

Although the landlord did not comply with the above requirements of the *Act*, I am satisfied that she did return the \$60.00 portion of the security deposit to the tenant within 15 days of receiving the tenant's forwarding address. I find that the landlord had no legal basis for withholding the remaining \$250.00 of the tenant's \$310.00 security deposit plus interest. The landlord did not file an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing, nor did she obtain the tenant's written permission to withhold these funds. As noted in Policy Guideline 17, the validity of any monetary claim that the landlord may have against the tenant has no bearing on the landlord's obligation to return the entire security deposit to the tenant in accordance with section 38 of the *Act*.

Under these circumstances, I find that the tenant is entitled to a monetary Order for the unreturned portion of the tenant's security deposit plus applicable interest. I also find that the tenant is entitled to a monetary Order pursuant to section 38(6) of the *Act* equivalent to the full amount of her security deposit. Interest is calculated on the original amount only and not the monetary Order pursuant to section 38(6).

Conclusion

I grant the tenant a monetary Order in the following terms which allows the tenant to obtain the unreturned portion of her security deposit plus interest as well as a monetary Order equivalent to the value of the security deposit.

Item	Amount
Total Unreturned Portion of Tenant's Security Deposit plus Interest (\$250.00 + \$8.85 = \$ 258.85)	\$258.85
Monetary Order Pursuant to Section 38(6) of the <i>Act</i> for failure to Return all of Tenant's Security Deposit	310.00
Total Monetary Order	\$568.85

The tenants are provided with these Orders in the above terms and the landlord(s) must be served with a copy of these Orders as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 01, 2011

Residential Tenancy Branch