



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of double her security deposit pursuant to section 38; and
- authorization to recover her 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 make submissions and to discuss this dispute with one another. The landlord confirmed that he received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on January 30, 2012. 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 obtain a return of her security deposit plus interest? Is the tenant entitled to obtain a monetary award for an amount equivalent to her original security deposit if the landlord failed to comply with the requirements of section 38 of the *Act*? Is the tenant entitled to obtain the recovery of her filing fee from the landlord?

Background and Evidence

The tenant first moved into this rental property on July 1, 1981. The parties agreed that the tenant paid a \$150.00 security deposit at that time, an amount still retained by the landlord. The parties agreed that when the tenant changed rental units within the building in August 2007, she did not pay any additional security deposit. Monthly rent for her rental unit when she vacated the property on or about November 29, 2011 was set at \$1,300.00, payable in advance on the first of each month.

The landlord agreed that the tenant provided him with two forwarding addresses (one work address and one home address) on or about November 30, 2011. He testified that he did not return any portion of the tenant's security deposit within 15 days of receiving

her forwarding address in writing, nor did he apply for dispute resolution or obtain the tenant's written agreement to retain any portion of her security deposit.

The tenant applied for a monetary award of \$894.04, which included her application for a return of double her security deposit plus interest and the recovery of her filing fee.

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 tenant 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, the landlord testified that he has not returned the security deposit within 15 days of receipt of the tenant's forwarding address. He also testified that he has not applied for dispute resolution to retain any portion of her security deposit and has not obtained her written permission to retain the security deposit. On this basis, I find that the tenant is entitled to a monetary award of \$150.00 plus applicable interest from July 1, 1981 until the date of this decision. Since I find that the landlord has not complied with the requirements of section 38 of the *Act*, I also issue a monetary award in the tenant's favour in the amount of \$150.00 pursuant to section 38(6) of the *Act*. No interest is payable on this portion of the monetary award.

Having been successful in this application, I find further that the tenant is entitled to recover her \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary Order in the tenant's favour in the following terms which allows her to obtain her original security deposit plus interest, to obtain a monetary award pursuant to section 38(6) of the *Act* as a result of the landlord's failure to comply with section 38 of the *Act*, and to recover her filing fee for her application:

Item	Amount
Return of Security Deposit Paid on July 1, 1981 plus Interest (\$150.00 + \$297.02 = \$447.02)	\$447.02
Monetary Award for Landlord's Failure to Comply with Section 38 of the <i>Act</i>	150.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$647.02

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord 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: March 28, 2012

Residential Tenancy Branch