



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

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

- authorization to obtain a return of double his security deposit pursuant to section 38; and
- authorization to recover his 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 cross-examine 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 February 28, 2012. I am satisfied that the tenant served this package and that the parties exchanged their written evidence with one another in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of his security deposit? Is the tenant entitled to a monetary award equivalent to the amount 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 recover the filing fee for his application from the landlord?

Background and Evidence

The tenant began occupancy of this rental unit as one of three co-tenants who commenced living in the premises on July 28, 2008. At that time, monthly rent for the periodic tenancy was set at \$1,535.00. The landlord returned \$400.00 of the security deposit for this tenancy by way of a February 2012 cheque that the tenant holds but has not yet cashed, pending the outcome of this hearing. The landlord continues to hold the remaining \$350.00 from the original three co-tenants' \$750.00 security deposit paid on or about July 28, 2008. The landlord also entered into written evidence a copy of a subsequent residential tenancy agreement the tenant and one of the previous co-tenants signed for this tenancy on November 1, 2009. Monthly rent according to that tenancy agreement and at the time of the end of the tenancy was set at \$1,500.00. Although the 2009 tenancy agreement required the payment of a \$690.00 security deposit, the tenant gave undisputed oral testimony that the landlord never returned the

original \$750.00 security deposit and that the correct value of the security deposit held for the tenancy since July 2008 has been \$750.00. The landlord said that he had no records that would dispute the tenant's claim that the original security deposit was never returned to the tenants when the 2009 tenancy was established.

The landlord confirmed the tenant's testimony that no joint move-in or move-out condition inspection was undertaken, nor was any move-in or move-out condition inspection report created by the landlord.

The parties agreed that the tenancy ended on January 30, 2012, when the tenant vacated the rental unit and transferred vacant possession of the rental unit to the landlord.

The landlord testified that he and the tenant had an oral agreement that the landlord would return \$400.00 from the tenant's security deposit to take into account damage that arose during the course of this tenancy. The tenant did not deny that at one point there was an oral agreement that would let the landlord keep a portion of the tenant's security deposit. However, he said that there was ongoing discussion regarding the oral agreement and the original amount of the security deposit as the landlord claimed that he held a \$690.00 security deposit while the tenant maintained that the correct value of the security deposit held by the landlord was \$750.00. While these negotiations continued, the landlord returned a \$400.00 cheque, but used an incorrect first name for the tenant in that cheque.

Also on February 6, 2012, the tenant sent the landlord a written request that he return the entire security deposit to the tenant and the co-tenant at the forwarding address he identified in this registered letter. In that letter, he clearly noted that he believed that the tenants were entitled to the return of their full \$750.00 security deposit plus interest.

The landlord confirmed that he received the tenant's forwarding address in the February 6, 2012 registered letter on or about February 9, 2012. He re-sent a new cheque for \$400.00 to the tenant identifying the tenant's correctly spelled name. The tenant testified that he continues to hold the landlord's \$400.00 cheque, but has not cashed it.

The tenant applied for a monetary award of \$1,556.58 for the return of double the original security deposit, applicable interest and the filing fee for his application. His application for double the security deposit resulted from the tenant's allegation that the landlord had failed to comply with section 38 of the *Act* requiring the landlord to return the tenant's security deposit in full within 15 days of the tenant's provision of his forwarding address in writing to the landlord.

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."

Based on the undisputed evidence of the parties, I find that the 15-day period cited in section 38(1) of the *Act* commenced on February 9, 2012, when the landlord received the tenant's forwarding address in writing. Section 38(4)(a) of the *Act* does not recognize oral agreements between the parties regarding the return of portions of security deposits. The landlord confirmed that there was no written agreement between the parties in which the tenant(s) allowed the landlord to retain any portion of the security deposit for this tenancy. Although the landlord returned a \$400.00 portion of the security deposit within the 15 day period for doing so, section 38 of the *Act* requires the landlord to return all of that deposit within the 15 day period under these circumstances.

I find that the landlord has not returned the security deposit in full within 15 days of receipt of the tenant's forwarding address and has no authorization to withhold any portion of that deposit. The tenant is therefore entitled to a monetary order for the remainder of his security deposit plus a monetary award equivalent to the original value of the security deposit with interest calculated on the original amount only.

In this case, I order the tenant to cash the \$400.00 cheque he continues to hold for the return of part of the security deposit. Based on my finding that the tenants' security deposit was \$750.00, I order that the landlord return the remaining \$350.00 of the tenants' original security deposit to the tenants plus applicable interest. Interest for the \$400.00 portion returned by mail on February 29, 2012 is calculated from July 28, 2008 until March 5, 2012 (i.e., the fifth day after its mailing as per section 90 of the *Act*). For the remaining \$350.00 portion of the tenant's security deposit, I order that interest is payable from July 28, 2008 until the date of this decision.

I find that the tenant is entitled to a monetary award of \$750.00 as the landlord has not complied with the requirements of section 38 of the *Act*. No interest is payable for this award. Having been successful in this application, I find that the tenant is entitled to recover the \$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 the tenant to recover the remaining portion of the security deposit for this tenancy and his filing fee, and to obtain a monetary award for the landlord's failure to comply with section 38 of the *Act*:

Item	Amount
Remaining Portion of Security Deposit paid on July 28, 2008 (\$750.00 - \$400.00 = \$350.00)	\$350.00
Interest on Retained \$350.00 Portion of Security Deposit from July 28, 2008 to date of this order	2.25
Interest on \$400.00 Returned Portion of Security Deposit from July 28, 2008 until March 5, 2012	2.57
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	750.00
Filing Fee	50.00
TOTAL MONETARY ORDER	\$1,154.82

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.

I also order the tenant to cash the \$400.00 cheque issued to him by the landlord in February 2012 for the remainder of the return of the security deposit for this tenancy. 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 30, 2012

Residential Tenancy Branch