



Dispute Resolution Services

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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 as a result of the landlord's failure to comply with the provisions of 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 tenant testified that he handed the landlord a copy of his dispute resolution hearing package on July 25, 2012 and sent the landlord a copy of that package by registered mail on July 24, 2012. The landlord denied receiving the hand delivered package, but confirmed that he had received the hearing package including the tenant's application for dispute resolution by registered mail delivered approximately one week after the tenant's mailing of that package. I am satisfied that the tenant served his dispute resolution hearing package to the landlord 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 this application from the landlord?

Background and Evidence

This periodic tenancy commenced on or about January 1, 2012. Monthly rent was set at \$900.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$450.00 security deposit paid on December 2, 2011.

The parties agreed that this tenancy ended on July 1, 2012. The tenant testified that he handed the landlord his forwarding address on a piece of paper at the end of this tenancy on July 1, 2012. The landlord said that he could not recall having received the tenant's forwarding address at that time. The landlord did acknowledge that he

received the tenant's forwarding address by late July by way of the tenant's application for dispute resolution included in the tenant's dispute resolution hearing package.

The landlord testified that he conducted a joint move-in condition inspection at the beginning of this tenancy, but did not prepare a report of that inspection. The landlord said that he sent text message requests to the tenant requesting his participation in a joint move-out condition inspection. He said that he conducted his own move-out condition inspection when the tenant refused to participate in a joint move-out condition inspection. The landlord testified that he did not prepare a move-out condition inspection report, although he did take photographs of the condition of the premises at that time which he has retained on his cellphone. The landlord testified that the tenant left the rental unit in very bad shape at the end of this tenancy. He said that there was feces in the rental unit, food in the kitchen and mould that had not been there at the start of this tenancy. The landlord did not submit any written or photographic evidence. He confirmed that he has not applied for dispute resolution with respect to 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 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 tenant gave specific sworn testimony that he provided his forwarding address in writing when he ended his tenancy. The landlord's sworn testimony was less definitive as the landlord said that he "could not recollect" having been given the tenant's forwarding address at the end of the tenancy. The landlord testified that he did offer to give the tenant \$100.00 of his security deposit at the end of this tenancy. He also said that he was a new landlord and was not familiar with the security deposit provisions of the *Act*.

Based on a balance of probabilities, I think it more likely than not that the tenant did in fact give the landlord his forwarding address in writing on or about July 1, 2012. The

tenant's claim that the landlord had his forwarding address but simply did not wish to return it to him is further bolstered by the landlord's acknowledgement that he had the tenant's forwarding address in writing in late July 2012 after receiving the tenant's application for dispute resolution. Had the reason for the landlord's retention of the tenant's security deposit been the tenant's failure to provide his forwarding address to the landlord then the landlord could have returned the security deposit within 15 days of receiving that address in late July 2012. The landlord still did not return the tenant's security deposit at that time. At the hearing, the landlord stated that he believed that he had a valid claim for damage arising out of this tenancy which should be taken into account in considering the tenant's application to obtain a return of his security deposit.

Under these circumstances, I find that the landlord has not returned the security deposit within 15 days of receipt of the tenant's forwarding address. The landlord has neither obtained written authorization from the tenant to retain any portion of that deposit nor has the landlord applied for dispute resolution to retain the tenant's security deposit. The tenant is therefore entitled to a monetary order amounting to double the deposit with interest calculated on the original amount only.

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

Conclusion

I issue a monetary Order in the tenant's favour under the following terms which allows the tenant to obtain a return of his original security deposit, to obtain a monetary award equivalent to the value of that deposit for the landlord's failure to comply with the provisions of section 38 of the *Act* and to recover his filing fee:

Item	Amount
Return of Tenant' s Security Deposit	\$450.00
Monetary Award for Landlord's Failure to Comply with the Provisions of s. 38 of the <i>Act</i>	450.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$950.00

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: September 19, 2012

Residential Tenancy Branch