



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 her security deposit. The landlords did not attend this hearing, although I waited until 9:42 a.m. in order to enable them to connect with this teleconference hearing scheduled for 9:30 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The tenant testified that on June 15, 2012, she gave the landlords an oral notice to end her tenancy by June 30, 2012. She testified that she handed both landlords copies of her dispute resolution hearing package on July 30, 2012, witnessed by her daughter. I am satisfied that the tenant served copies of her dispute resolution hearing package to the landlords in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of her security deposits pursuant to section 38 of the *Act*?

Background and Evidence

The tenant testified that this periodic tenancy commencing on March 3, 2012, ended when she vacated the rental unit by June 30, 2012. Monthly rent was set at \$500.00, payable in advance on the first of each month. She testified that she paid a \$250.00 security deposit on March 1, 2012.

The tenant testified that her daughter SF handed the female landlord the tenant's forwarding address in writing on July 6, 2012. She testified that she has not received a return of any portion of her security deposit and did not give her written authorization to allow the landlords to retain her security deposit.

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, I find that the landlords have not returned the tenant's security deposit in full within 15 days of receipt of the tenant's forwarding address in writing. There is no record that the landlords applied for dispute resolution to obtain authorization to return any portion of the tenant's security deposit. The tenant gave undisputed sworn testimony that the landlord has not obtained her written authorization to retain any portion of the tenant's security deposit.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the deposit with interest calculated on the original amount only. No interest is payable over this period.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms which allows the tenant to recover her original security deposit plus a monetary award equivalent to the value of her security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*:

Item	Amount
Return of Security Deposit	\$250.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	250.00
Total Monetary Order	\$500.00

The tenant is 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: October 17, 2012

Residential Tenancy Branch