



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 double her security deposit. 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 application. The landlord confirmed that he received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on August 20, 2012. I am satisfied that the tenant served this package to the landlord and that the parties served their written evidence to one another in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of her security deposit? Is the tenant entitled to a monetary award equivalent to the amount of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Background and Evidence

The parties agreed that this periodic tenancy commenced on or about March 8, 2005. Monthly rent by the time the tenant vacated the rental unit by September 11, 2011 was set at \$725.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$362.50 security deposit paid on or about February 21, 2005.

The tenant testified that she telephoned the landlord by September 11, 2011 to advise him of her new forwarding address so that he could return her security deposit to him. The parties agreed that the tenant sent the landlord an October 7, 2011 letter in which she requested that he return the tenant's security deposit to the address she provided in that letter. The landlord entered a copy of the October 7, 2011 letter into written evidence and testified that he likely received it a few days after October 7, 2011. In accordance with section 90(a) of the *Act*, I find that the tenant's October 7, 2011 letter was deemed served to the landlord on October 12, 2011, five days after its mailing.

The landlord testified that he did not return any portion of the tenant's security deposit to the tenant within 15 days of receiving her October 7, 2011 letter. He maintained that the tenant owed him for unpaid rent for a portion of September 2011 and for damage

arising out of this tenancy. He testified that he has not applied for authorization to retain any portion of the tenant's security deposit, nor has he applied for a monetary award from the tenant. The landlord confirmed that he has not obtained the tenant's written authorization to retain any portion of the tenant's 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 landlord has 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 landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The landlord has not obtained the tenant's written authorization at the end of the tenancy 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.

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 interest and a monetary award equivalent to the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*.

Item	Amount
Return of Security Deposit	\$362.50
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i> (\$362.50 + \$12.82 = \$375.32)	375.32
Total Monetary Order	\$737.82

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.

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 02, 2012

Residential Tenancy Branch

