



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, MNSD, FF, SS

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;
- an order regarding a disputed additional rent increase pursuant to section 43;
- authorization to serve documents or evidence in a different way than required by the *Act* pursuant to section 71; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 11:12 a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 11:00 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 gave sworn oral testimony and written evidence that on May 16, 2012, she handed the landlord a notice to end her tenancy by June 16, 2012. She entered written evidence that she sent the landlord a copy of her dispute resolution hearing package by registered mail on October 4, 2012. She provided the Canada Post Tracking Number to confirm this mailing, noting that the landlord signed a Canada Post record for receipt of this mailing. I am satisfied that the tenant served the above documents to the landlord in accordance with the *Act*.

At the commencement of the hearing, the tenant clarified that there was no issue regarding serving documents to the landlord as the landlord lives in the main floor of the rental property in question. As such, she withdrew her application for authorization to serve documents to the landlord in a different way than required by the *Act*. This aspect of her application is withdrawn.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of a portion 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*? Is the tenant entitled to a monetary award for losses arising out of this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This periodic tenancy commenced on February 17, 2012. Monthly rent was \$680.00, payable in advance on the 17th of each month. The tenant paid a \$680.00 security deposit on February 17, 2012. The landlord returned \$433.60 of that security deposit on or about June 25, 2012. The tenant has negotiated the landlord's \$433.60 cheque for a portion of her security deposit. The tenant gave undisputed oral and written testimony that the landlord has retained the remaining \$246.40 of her security deposit.

The tenant's application for a monetary award of \$1,429.84 included the following items:

Item	Amount
Return of Security Deposit	\$680.00
Penalty for Failing to Return all of Tenant's Security Deposit	680.00
Double Registered Letter Costs (\$9.92 x 2 = \$19.84)	19.84
Recovery of Filing Fee for this application	50.00
Total of Above Items	\$1,429.84

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."

The following provisions of Policy Guideline 17 of the Residential Tenancy Policy Guidelines would seem to be of relevance to the consideration of this application:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;...*
- whether or not the landlord may have a valid monetary claim...*

In this case, the triggering date for the return of all of the tenant's security deposit was June 16, 2012, the date when this tenancy ended. The tenant submitted written evidence to demonstrate that she provided the landlord with her forwarding address in writing on May 16, 2012, when she gave the landlord her notice to end this tenancy. She also sent the landlord an additional copy of her forwarding address by way of an August 15, 2012 registered letter.

Although the landlord did not comply with the above requirements of the *Act* and return all of the tenant's security deposit within 15 days of the end of her tenancy, I am satisfied that he did return \$433.60 of the tenant's security deposit to the tenant.

I find that the landlord had no legal basis for withholding the remaining \$246.40 of the tenants' \$680.00 security deposit. The landlord did not file an application for dispute resolution within 15 days of receiving the tenants' forwarding address in writing, nor did he obtain the tenant's written permission to withhold these funds. As noted in Policy Guideline 17, the validity of any monetary claim that the landlord may have against the tenant has no bearing on the landlord's obligation to return the entire security deposit to the tenant in accordance with section 38 of the *Act*.

Under these circumstances, I find that the tenant is entitled to a monetary Order amounting to double her original security deposit less the amount already returned by the landlord. No interest is payable over this period. As the tenant has been successful in her application, I allow her to recover her \$50.00 filing fee for this application from the landlord.

I dismiss the remainder of the tenant's application for a monetary award as she testified that she did not pay the additional rent requested by the landlord after she had been living in the rental unit for a few months. Similarly, she did not pay sales taxes on her monthly rent as requested at one time by the landlord. I also dismiss the tenant's application to recover double her registered mailing costs as these expenses are not recoverable under the *Act*.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms, which allows the tenant to recover the remaining portion of her security deposit, a penalty for the landlord's failure to comply with section 38 of the *Act*, and to recover her filing fee:

Item	Amount
Total Unreturned Portion of Tenant's Security Deposit (\$680.00 - \$433.60 = \$246.40)	246.40
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	680.00
Filing Fee	50.00
Total Monetary Order	\$976.40

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.

The tenant's application for a substituted service Order is withdrawn.

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: December 20, 2012

Residential Tenancy Branch