



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNSD, FF

Introduction

This hearing was convened in response to an application filed by the tenant who is seeking recovery of her security deposit and the filing fee paid of rates application.

The landlord did not appear at the hearing. The tenant testified that she served the landlord with the Notice of Hearing, Application and evidence package by way of registered mail sent December 19, 2012. The tenant submitted evidence from Canada Post to show that the landlord signed for the registered item on December 24, 2012. Based on the evidence of the tenant I am satisfied that the landlord has had notice of this claim.

The tenant gave evidence under oath.

Background Summary

The evidence is that the tenant paid a security deposits of \$350.00 at the start of this tenancy on September 30, 2012. The tenant gave evidence that this tenancy ended on December 1, 2012 at which time she supplied her forwarding address to the landlord. The security deposit was not returned to the tenant therefore the tenant filed her application on December 18, 2012. Since filing the application the tenant received \$350.00 from the landlord. The cheque was mailed post-marked December 27, 2012. The tenant therefore claims double the deposit.

Findings

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 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** pay the tenant double the amount of the deposit (section 38(6)).

The undisputed evidence shows that the tenant supplied her forwarding address to the landlord on December 1, 2012 and the landlord did not mail a deposit until December 27, 2012 by which time the tenant had already filed this claim.

I find that the landlord did not comply with Section 38 in that she did not return the deposit within the 15 days allowed under the Act. The original deposit totaled \$350.00 and doubling the entire deposit would now result in a monetary Order being made in favour of the tenants in the sum of \$700.00. However, the evidence is that the tenant has now received a cheque from the landlord in the sum of \$350.00. I will therefore deduct this sum from the award.

As the tenant has been successful in this claim I will also award recovery of the \$50.00 filing fee paid for this application.

Calculation of monetary award in favour of tenant:

Security Deposit originally paid	\$350.00
Double Security Deposit	350.00
Less sum returned on December 27, 2012	-350.00
Plus filing fee	50.00
Balance due and owing by landlord to tenant	\$400.00

The tenant is provided with an Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. This is a final and binding Order enforceable as any Order of the Small Claims Division of the Provincial 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: March 12, 2013

Residential Tenancy Branch

