



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 her pet damage and security deposits (the deposits) pursuant to section 38; 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 9:45 a.m. in order to enable the landlord 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 she handed a copy of her dispute resolution hearing package to the receptionist at the landlord's dental office on January 25, 2013. She said that the receptionist advised her that the landlord was busy seeing a patient, but assured the tenant that she would hand the landlord the tenant's dispute resolution hearing package once the landlord was finished with her patient.

The tenant testified that the only address the landlord had given the tenant was that of her business address at the landlord's dental office. She testified that the landlord had carried on business as a landlord at that address in the past as she had signed the Residential Tenancy Agreement with the tenant at that location. The tenant also testified that she handed the landlord a copy of her forwarding address on December 11, 2012, for the return of her security deposit. On that occasion, the landlord had initialled the tenant's copy of the tenant's letter, confirming that she received the tenant's letter on that date. Based on this undisputed evidence and the initial on the letter provided to the landlord on December 11, 2012 letter, I find that the landlord has been conducting her business as a landlord from her dental office as claimed by the tenant. As the landlord's receptionist confirmed that she would give the hearing package to the landlord and the receptionist is employed at the address where the

landlord has been conducting her business as a landlord, I find that the tenant has served the landlord with her dispute resolution hearing package in accordance with section 89(1)(b) of the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of her deposits? Is the tenant entitled to a monetary award equivalent to the amount of her deposits 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 October 15, 2011. Monthly rent was set at \$1,500.00, payable in advance on the first of each month. The tenant testified that the landlord continues to hold the tenant's \$750.00 security deposit and \$200.00 pet damage deposit, both paid on October 7, 2011.

The tenant testified that she vacated the premises on November 30, 2012, after advising the landlord that she would do so on September 26 or 27, 2012. She said that she handed a copy of a letter entered into written evidence to the landlord at the landlord's dental office on December 11, 2012. This letter contained the tenant's forwarding address, where the tenant requested the return of her deposits. The tenant testified that she has not received a return of any portion of her deposits.

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 deposits or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposits. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposits, and the landlord must return the tenant's deposits plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the deposits (section 38(6) of the *Act*). With respect to the return of the deposits, 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 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 deposits 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 deposits. The tenant gave undisputed sworn testimony that the landlord has not obtained her written authorization at the end of the tenancy to retain any portion of the tenant's deposits.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double her deposits with interest calculated on the original amount only. No interest is payable over this period. I also allow the tenant to recover her filing fee for her application.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms, which allows the tenant to recover double her deposits and her filing fee from the landlord:

Item	Amount
Return of Pet Damage & Security Deposits (\$750.00 + \$200.00= \$1,500.00)	\$950.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	950.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,950.00

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order 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: April 18, 2013

Residential Tenancy Branch

