



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

This hearing dealt with the tenant's amended application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of double her security deposit pursuant to section 38;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover her filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The male landlord (the landlord) confirmed that the landlords received the tenant's February 4, 2013 email that the tenant was intending to end her tenancy by March 31, 2013. The tenancy ended on March 31, 2013. The tenant testified that she sent a copy of her original application for dispute resolution in which she sought a monetary award of \$402.50 to the female landlord by registered mail on April 24, 2013. She added the male landlord's name to her amended application for dispute resolution in which she requested a monetary award of \$805.00, plus the recovery of her filing fee. She testified that she sent both landlords a copy of her amended application as part of her amended dispute resolution hearing package by registered mail on May 9, 2013. Both landlords confirmed that they received the above documents from the tenant. I am satisfied that the tenant served her dispute resolution hearing packages to the landlords in accordance with the *Act*.

Although the landlords had received copies of the tenant's written evidence, the tenant testified that she had not received the landlords' evidence. The landlord testified that he sent the landlords' evidence to the tenant at the address she identified in her application for dispute resolution. The tenant testified that she recently moved and has not retrieved any mail that the landlords may have sent her at that address. The landlords'

written evidence package included a short letter explaining that the landlord had enclosed a \$143.90 cheque dated May 8, 2013, for the remainder of her security deposit. The tenant confirmed that she has not received this cheque. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed to have been served with the landlords' written evidence on May 13, 2013, the fifth day after its mailing.

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 landlords' 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 began on August 1, 2009. Monthly rent was set at \$805.00, payable in advance on the first of each month. The tenant paid a \$402.50 security deposit on July 9, 2009.

The landlord confirmed that the tenant provided her forwarding address in writing to the female landlord on March 31, 2013, at the time of the joint move-out condition inspection.

The tenant testified that on or about April 24, 2013, she received an April 22, 2013 cheque from the landlord in the amount of \$258.60 for a partial return of her security deposit. She testified that she has not negotiated that cheque, but has retained it in her possession. Both parties agreed that the landlord withheld \$143.90 from her security deposit for the replacement cost of a toilet that the landlords maintain was damaged during the course of this tenancy.

The tenant's amended application sought a monetary award of \$805.00 plus the recovery of her filing fee. Although the landlord has not applied for dispute resolution for damage to the toilet, the landlord maintained that the toilet was damaged during this tenancy.

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 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. The landlord confirmed that the landlords have not applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The landlord also confirmed that the landlords have 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 for the value of her original security deposit. No interest is payable over this period.

I am satisfied that as of the date of this hearing, the landlord has attempted to return all of the tenant's security deposit to the tenant. I order the tenant to negotiate the \$258.60 cheque from the landlord that has been in her possession since April 24, 2013. I also order the tenant to attempt to retrieve and negotiate the landlord's second cheque in the amount of \$143.60 that the landlord testified he sent to the tenant on or about May 8, 2013 to the address she provided to him on her application for dispute resolution. The parties agreed that the tenant will telephone the landlord to make arrangements for a replacement cheque to be issued and sent by the landlord if she is unable to locate the missing \$143.60 cheque sent by the landlord earlier this month.

As the tenant has been successful in this application, I allow her to recover her filing fee from the landlords.

As noted at the hearing, the landlord remains at liberty to apply for a monetary award for damage arising out of this tenancy within the time frames allowed under the *Act*. This issue is not currently before me.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms, which allows the tenant a monetary award for the landlords' failure to comply with the *Act* and to recover her filing fee:

Item	Amount
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	\$402.50
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$452.50

The tenant is provided with these Orders in the above terms and the landlord(s) must be served with this Order 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.

I order the tenant to negotiate the landlord's \$258.60 cheque currently in her possession. I also order the tenant to check her mail at her previous residence to determine if she can obtain the other cheque from the landlord in the amount of \$143.90. I order her to negotiate that original \$143.90 cheque if she is successful in locating it. In the event that the tenant is unable to locate the landlord's original cheque for \$143.90 and as discussed at the hearing, I order the tenant to contact the landlord at the telephone number provided by him to request that he send a replacement cheque in the amount of \$143.90 to her at her current address. In that event, I order the landlord to send the tenant a replacement cheque in the amount of \$143.90. In that event, I order the tenant to refrain from negotiating the landlord's original \$143.90 cheque should the original \$143.90 cheque subsequently come into her possession.

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: May 22, 2013

Residential Tenancy Branch

