



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

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; 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 1:44 p.m. in order to enable him to connect with this teleconference hearing scheduled for 1:30 p.m. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. The tenant testified that she sent the landlord a copy of her dispute resolution hearing package, also containing her written evidence, by registered mail on September 30, 2013. She provided the Canada Post Tracking Number to confirm this registered mailing. I am satisfied that the tenant served these documents to the landlord in accordance with the *Act*.

The tenant testified that subsequent to filing her application for dispute resolution, the landlord returned her \$200.00 security deposit to her, sometime in November 2013. As such, she reduced the amount of her requested monetary award from \$659.00 to \$459.00 to reflect the landlord's return of her security deposit to her.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses and damages arising out of this tenancy? Is the tenant entitled to a monetary award for the return of double her security deposit less the amount already returned to her by the landlord 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 began on April 14, 2013. Monthly rent was set at \$400.00, payable in advance on the first of each month. The tenant paid the tenant a \$200.00 security deposit on April 18, 2013. The tenant entered into written evidence a copy of her June 28, 2013 written notice to end her tenancy by July 31, 2013, which she said she provided to the landlord before July 1, 2013. She vacated the rental unit on August 1, 2013.

The tenant testified that she sent the landlord a copy of her forwarding address in writing by registered mail on August 21, 2013. She said she also sent him this request by regular mail and dropped a copy off at his mailing address, placing it in his mail slot or mailbox.

The tenant's original application for a monetary award of \$659.00 included the following items listed in her written evidence:

Item	Amount
Return of Security Deposit	\$200.00
Amount Equivalent to the Security Deposit for Landlord's Alleged Failure to Comply with section 38 of the Act	200.00
Keys cut at Tenant's Expense	5.98
Dead Bolt Installed at Tenant's Expense	12.97
Move Door and Frame - Supplies	30.25
Labour for Dead Bolt Installation and Move Door (8 hours @ \$20.00 per hour = \$160.00)	160.00
Filing Fee	50.00
Total Monetary Order Requested	\$659.20

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 did not return the security deposit within 15 days of being deemed to have received the tenant’s forwarding address in writing on August 26, 2013, and did not apply for dispute resolution within that time frame. The tenant is therefore entitled to a monetary order amounting to double the security deposit with interest calculated on the original amount only, less the amount of the security deposit returned to the tenant in November 2013. No interest is payable over this period.

I have considered the tenant’s undisputed sworn testimony and written evidence that she incurred expenditures during this tenancy with the landlord’s knowledge and authorization. Based on the receipts she submitted, I find that the tenant is entitled to a monetary award of \$5.98 for keys she had created, \$12.97 for a dead bolt, and \$30.25 for supplies relating to a door and door frame. As the tenant did not provide any receipt for the labour costs she claimed to have incurred for these repairs, I dismiss her application for that item without leave to reapply.

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

Conclusion

I issue a monetary Order in the tenant’s favour under the following terms, which allows the tenant to recover a monetary award for the landlord’s failure to comply with section 38 of the *Act*, for losses incurred during this tenancy and the recovery of her filing fee:

Item	Amount
Return of Double Security Deposit as per section 38 of the <i>Act</i> (\$200.00 x 2 = \$400.00)	\$400.00
Less Security Deposit Returned in November 2013	-200.00
Keys cut at Tenant’s Expense	5.98
Dead Bolt Installed at Tenant’s Expense	12.97
Move Door and Frame - Supplies	30.25
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$299.20

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: December 20, 2013

Residential Tenancy Branch

