



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 all or a portion of her security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although the hearing continued until 11:22 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. She was given full opportunity to be heard, to present sworn testimony, and to make submissions.

The tenant testified that she served the Notice for Dispute Resolution and application package to the landlord by sending it by registered mail on June 6, 2014. The tenant provided a receipt with a tracking number as well as a confirmation of receipt from Canada Post. Based on the evidence, and pursuant to section 89 and 90, I find the landlord deemed served with this Notice and package on June 11, 2014, 5 days after registered mailing.

Issues to be Decided

Is the tenant entitled to a monetary award for the return of a portion of her security deposits?

Is the tenant entitled to a monetary award equivalent to double the value 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 recover the filing fee for this application from the landlord?

Background, Evidence

This month to month tenancy began April 1, 2012 and continued until April 30, 2014. The rental amount of \$1400.00 was payable on the first of each month. The tenant testified that the landlord continues to hold her security deposit of \$700.00. That deposit was paid on April 1, 2012. The tenant provided a copy of the tenancy agreement in her documentary evidence that verified these details.

The tenant provided documentary evidence to show that the landlord had given notice to the tenants as a result of a sale of the property. The landlord requested the tenants vacate by April 30, 2014. The tenant testified that she vacated the premises on April 30, 2014. On that date, the tenant testified that she did a “walk-through inspection” of the property with the landlord. She testified that the landlord said, “everything is fine”. She testified that she provided the landlord with a forwarding mailing address on that date, April 30, 2014.

The tenant testified that she made numerous attempts to contact the landlord when she did not receive her security deposit. She testified that she attempted to contact the landlord by text message; telephone; and by sending letters. Those letters were submitted in evidence for this hearing. She testified that more than one letter provided the tenant's forwarding address to the landlord.

Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the security deposit.

The undisputed testimony of the tenant is that the landlord continues to hold the tenant's security deposit of \$700.00 plus interest from April 1, 2012 until the date of this decision. I allow the tenant the return of her security deposit plus any applicable interest. No interest is payable over this period. I further allow the tenant an award of double the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$50.00 filing fee paid for this application.

The tenant is entitled to a monetary order which allows the tenant an award of double his security deposit, less the amount already returned to him, plus the recovery of his filing fee, as follows;

Item	Amount
Return of Double Security Deposit as per section 38 of the Act ($\$700.00 \times 2 = \1400.00)	\$1400.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1450.00

Conclusion

I issue a monetary Order in the tenant's favour allowing her to recover \$1450.00, double her security deposit and the filing fee, from the landlord.

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 10, 2014

Residential Tenancy Branch

