



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, O, FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38;
- other unspecified remedies; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend the hearing, which lasted approximately 14 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions, and to call witnesses.

The tenant confirmed that the landlord was served with the tenant's application for dispute resolution hearing package ("Application") on March 23, 2015, by way of registered mail. The tenant provided a Canada Post receipt and tracking number to confirm this service. The tenant confirmed that she served the landlord at the address provided by him in the tenancy agreement, which was confirmed at the previous hearing between the parties on February 17, 2015. The tenant stated that the package was returned to her because the landlord refused to claim the package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's Application on March 28, 2015, five days after its registered mailing.

At the outset of the hearing, the tenant confirmed that she wished to withdraw her Application for "other" unspecified remedies. Accordingly, this portion of the tenant's Application is withdrawn.

Issues to be Decided

Is the tenant entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

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 and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the tenant, not all details of the submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

The tenant confirmed that a "previous hearing" was held between the same parties for this rental unit on February 17, 2015. The tenant provided a copy of a written decision of the same date, issued by a different Arbitrator. That decision dismissed the tenant's application for the return of her security deposit with leave to reapply, as the tenant's application was considered premature. The Arbitrator determined that the landlord received notice of the tenant's forwarding address at the hearing, as of February 17, 2015. The Arbitrator held that if the landlord did not file an application or return the deposit within 15 days of the above date, the tenant could apply for the return of double the amount of the deposit, as per section 38 of the *Act*. Accordingly, I have jurisdiction to hear this matter, as the tenant had leave to reapply to recover her security deposit.

The tenant testified that this tenancy began on July 1, 2014 and ended on July 23, 2014. Monthly rent in the amount of \$450.00 was payable on the first day of each month. The tenant provided a copy of the signed written tenancy agreement with her Application. The tenant testified that she paid a security deposit of \$225.00 to the landlord on June 28, 2014 and she provided a receipt for this payment with her Application. The tenant testified that the landlord continues to retain the deposit in full, as no portion has been returned to her, including since the previous hearing date. The tenant stated that no move-in or move-out condition inspections or reports were completed for this tenancy. The tenant confirmed that she did not provide written permission to the landlord to retain any amount from her security deposit. The tenant confirmed that she was not aware of any application for dispute resolution filed by the

landlord to retain any amount from the deposit, as she had not been served with any application. The tenant confirmed that she re-sent a letter with her written forwarding address to the landlord, along with this Application on March 23, 2015. The tenant provided a copy of this letter with her Application.

The tenant seeks the return of double the amount of her security deposit, totalling \$450.00, due to the landlord's failure to return her deposit in full or make an application for dispute resolution, within 15 days of receiving a written forwarding address on February 17, 2015 at the previous hearing. The tenant also seeks to recover the \$50.00 filing fee for her application at the previous hearing as well as \$50.00 for the filing fee for the current Application at this hearing.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the 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)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I accept the tenant's undisputed evidence at this hearing, as the landlord did not appear. The tenancy ended on July 23, 2014. The landlord received the tenant's written forwarding address on February 17, 2015, as per the previous hearing decision. The tenant did not give the landlord written permission to retain any amount from her deposit. The landlord did not return the deposit to the tenant or make an application for dispute resolution to claim against this deposit, within 15 days of his receipt of the forwarding address on February 17, 2015. The tenant filed her Application on March 20, 2015, after this 15-day period expired.

Over the period of this tenancy, no interest is payable on the landlord's retention of the tenant's security deposit. In accordance with section 38(6)(b) of the *Act*, I find that the tenant is entitled to receive double the value of her security deposit, totalling \$450.00.

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

I dismiss the tenant's claim to recover the \$50.00 filing fee for her previous hearing application. That was a separate proceeding before a different Arbitrator and is *res judicata*, meaning it has already been decided. The Arbitrator did not award the \$50.00 filing fee to the tenant at that hearing.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, is dismissed without leave to reapply. The tenant stated that she was only seeking a monetary order for double her security deposit and the two filing fees, not any other amounts.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$500.00 against the landlord. The tenant is provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant's application for other unspecified remedies is withdrawn.

The tenant's application to recover the \$50.00 filing fee from the previous hearing and a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, is dismissed without leave to reapply.

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: September 3, 2015

Residential Tenancy Branch

