



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;
- authorization to recover his filing fee for this application from the landlord 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, to call witnesses and to cross-examine one another. The tenant confirmed that no documentary evidence was submitted to the landlord or the Residential Tenancy Branch. The tenant also confirmed receipt of the landlord's documentary evidence package.

Preliminary Issue

The landlords provided written submission to dismiss the tenant's application as the landlords were not each served with the notice of hearing package, received a copy of the Fact Sheet from the same package and that the tenant failed to serve the landlords with the same package within 3 days of the April 29, 2015 filing date. The landlords both acknowledged that they both became aware of the tenant's application for dispute when the package was received by S.S. on May 12, 2015. The landlords provided undisputed affirmed testimony that over the 5 month period after receiving the tenant's application that they were not prevented from properly responding to the tenant's application. The landlord, S.B. stated they were able to read and research all of the material provided by the tenant prior to the hearing date.

On the basis of this evidence, I am satisfied that both the landlords and tenant were deemed served with the notice of hearing package and the submitted documentary evidence pursuant to section 88 and 89 of the Act.

At the outset of the hearing it was clarified with all parties that the tenant's monetary claim was for \$1,100.00 which consisted of the return of the original \$525.00 security deposit, compensation of \$525.00 as the landlord failed to comply with the Act and recovery of the \$50.00 filing fee.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for the return of double the security deposit and recovery of his filing fee?

Background and Evidence

This tenancy began on July 1, 2013 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$1,050.00 payable on the 1st day of each month and a security deposit of \$525.00 was paid on May 22, 2013.

Both parties agreed that the tenancy ended on April 30, 2014 and that the tenant provided his forwarding address in writing to the landlord on May 2, 2014. Both parties confirmed that the landlord attempted to return the uncontested portion of the security deposit of \$400.00, but that the tenant did not accept the cheque and has held the cheque pending the outcome of the hearing.

The landlord provided uncontested affirmed testimony that the security deposit was withheld due to a claim that the tenant left the rental premises unlocked and unsecured at the end of the tenancy requiring the landlord to hire a locksmith to replace the locks and secure the rental property for a cost of \$125.00.

The landlords both provided uncontested affirmed testimony that the \$525.00 was not returned to the tenant within the 15 day period following the end of the tenancy. The landlords both provided uncontested affirmed testimony that permission to retain a portion of the deposit was not received from the tenant nor did the landlords make an application for dispute resolution to dispute the return of the security deposit and make a claim for compensation.

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 subsection 38(6) of the Act equivalent to the value of the security deposit. However, pursuant to paragraph 38(4)(a) of the Act, 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.

Both landlords confirmed in their direct testimony that the \$525.00 security deposit was not returned to the tenant. I find based upon the undisputed affirmed testimony of both parties that the landlords has failed to return the \$525.00 security deposit within the allowed timeframe. The landlords have also failed to obtain the tenant's permission to retain all or a portion of the security deposit, nor did the landlords make an application for dispute resolution to obtain authorization to retain all or a portion of the security deposit. As such, I find that the landlords are liable under section 38 (6) of the Act to pay an amount of \$525.00 to the tenant.

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.

Conclusion

I issue a monetary order in the tenant's favour under the following terms which allows the tenant to recover his original security deposit plus a monetary award equivalent to the value of his security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the Act:

Item	Amount
Return of Security Deposit	\$525.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the Act	525.00
Recovery of Filing Fee	50.00
Total Monetary Order	\$1100.00

The tenant is provided with this order in the above terms and the landlord(s) must be served with a copy of this order as soon as possible. Should the landlord(s) 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.

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: October 08, 2015

Residential Tenancy Branch

