



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:

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

Both parties attended the hearing by conference call and gave undisputed affirmed testimony. The tenant stated that the landlord was served with the notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on May 27, 2015 and has submitted a copy of the Customer Receipt Tracking number as confirmation. The landlord confirmed receipt of the tenant's documentary evidence package. The landlord confirmed that he did not file any documentary evidence. Based upon the undisputed affirmed testimony of both parties, I find that both parties have been properly served as per section 88 and 89 of the Act.

During the hearing, the landlord participated in the conference call hearing via his cellular telephone. At 2:42 pm, the landlord's connection was dropped where he was no longer able to participate in the hearing. The tenant was notified that we would wait a few minutes to see if the landlord could reconnect to the conference call hearing. At 2:44pm, the landlord was re-connected to the conference call hearing while still experiencing connection issues. The landlord was cautioned to re-connect with a landline or move to a different location with a stable connection. The landlord stated that neither options were possible. The landlord was cautioned that if he was disconnected again or experienced issues again the hearing would proceed in his absence. At 2:45pm the landlord's connection was again dropped where he was no longer able to participate in the hearing. The tenant was notified that we would wait

again another few minutes to see if the landlord could reconnect to the conference call hearing, but if this was not possible the hearing would proceed in the landlord's absence. At 2:47pm, the landlord was re-connected to the conference call hearing while still experiencing connection issues that prevented him from participating. At 2:48pm the landlord's connection was again dropped where he was no longer able to participate in the hearing. At this time, the hearing proceeded in the absence of the landlord. No further attempts at connection were made by the landlord until the end of the hearing.

Issue(s) to be Decided

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

Background and Evidence

At the outset of the hearing both parties confirmed that the tenant received the original \$725.00 security deposit from the landlord on May 26, 2015.

Both parties confirmed that there was a signed tenancy agreement, but that neither party had submitted a copy to the Residential Tenancy Branch. Both parties agreed that the tenancy began on February 1, 2015 and ended on April 29, 2015. Both parties agreed that the tenant had paid a \$725.00 security deposit to the landlord and that the landlord received the tenant's forwarding address in writing on April 29, 2015 during the condition inspection report for the move-out.

The landlord stated that during the condition inspection report for the move-out damage was noticed. The landlord stated that he had tried to mail the security deposit to the tenant, but that it was returned by Canada Post. Both parties confirmed that the landlord had mailed the security deposit to the wrong address.

The tenant was asked if she gave permission to the landlord to retain the \$725.00 security deposit past the 15 day time limit or if she was aware of the landlord filing an application for dispute resolution to dispute the return of the security deposit. The tenant answered "no" to both questions.

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, 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.

The tenant stated that she did not provide the landlord with permission to retain the \$725.00 security deposit, nor is the tenant aware of an application filed by the landlord to dispute the return of the security deposit.

I accept the undisputed affirmed testimony of the tenant that the landlord returned the original \$725.00 security deposit on May 26, 2015, which is 27 days after the end of the tenancy and when the landlord received the tenant's forwarding address in writing. I find that the tenant has established sufficient grounds that the landlord failed to abide by section 38 (1) and is required under section 38 (6) of the Act to pay the tenant an amount equal to the \$725.00 security deposit.

Having been successful in her application the tenant is also entitled to recovery of the \$50.00 filing fee.

Conclusion

I issue a monetary order in the tenant's favour under the following terms which allows the tenant a monetary award equivalent to 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:

| Item | Amount |
|---|-----------------|
| Monetary Award for Landlord's Failure to Comply with s. 38 of the Act | \$725.00 |
| Recovery of Filing Fee | 50.00 |
| Total Monetary Order | \$775.00 |

The tenant is provided with this order in the above terms and the landlord must be served with a copy of 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.

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 30, 2015

Residential Tenancy Branch

