



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 the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover his 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 confirmed that no documentary evidence was submitted. The landlord confirmed that no documentary evidence was submitted. As both parties have attended and have confirmed receipt of the notice of hearing package and that no documentary evidence was submitted, I am satisfied that both parties have been properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

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

Background and Evidence

The tenant stated that the tenancy ended in 2014 and that his forwarding address in writing was provided to the landlord at the end of the tenancy. The tenant stated that as of the date of filing the application for dispute that the security deposit was not returned by the landlord.

Neither party submitted any documentary evidence. Both parties confirmed that the tenancy ended on July 31, 2014 and that the tenant had paid a \$400.00 security deposit

at the beginning of the tenancy. Both parties confirmed that the tenant sent his forwarding address in writing in a letter on August 6, 2014 by Canada Post Registered Mail and that the landlord received it approximately 1 week later.

The landlord stated that he did not have permission from the tenant to retain all or part of the security deposit, nor did he obtain an order from the Residential Tenancy Branch to retain it.

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.

It is clear based upon the undisputed affirmed testimony of both parties that the tenancy ended on July 31, 2014 and that the tenant sent his forwarding address in writing to the landlord on August 6, 2014 by Canada Post Registered Mail. I find that the landlord had until August 21, 2015 to file an application for dispute or to return the security deposit. The landlord confirmed that he did not have permission from the tenant or the Residential Tenancy Branch to retain the \$400.00 security deposit.

Based upon the undisputed affirmed testimony, I find that the tenant has established a claim for return of the original \$400.00 security deposit. The landlord did not make an application to dispute the return of the \$400.00 security deposit.

As the landlord has failed to comply with section 38 (1) in returning the security deposit within the allowed 15 day timeframe or file an application for dispute to dispute the return of the security deposit, I find that the landlord is liable under section 38 (6) of the Act for an amount equal to the \$400.00 security deposit.

The tenant has established a monetary claim for \$800.00. I also grant the tenant's request for recovery of the \$50.00 filing fee having been successful in his 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 landlord's failure to comply with the provisions of section 38 of the Act:

Item	Amount
Return of Original Security Deposit	\$400.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the Act	400.00
Recovery Filing Fee	50.00
Total Monetary Order	\$850.00

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: November 24, 2015

Residential Tenancy Branch

