



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 her filing fee for this application from the landlord pursuant to section 72.

The tenant seeks return of double her security deposit.

All named 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 provided me with a Canada Post customer receipt that showed the landlord was served by registered mail on 19 June 2015. On the basis of this evidence, I am satisfied that the landlords were deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

Preliminary Issue – Landlords' Evidence

The tenant had not yet received the landlords' evidence; however, that evidence is not relevant to this application. The evidence would be appropriate in support of a claim by the landlords, but they have not yet filed any such claim. I did not consider the landlord's documentary evidence in reaching this decision as it was not relevant.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for the remainder of a portion of her and security deposit? Is the tenant entitled to a monetary award equivalent to the amount of her security deposit as a result of the landlords' 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 landlords?

Background and Evidence

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

This tenancy began 1 July 2013 and ended on or about 31 May 2015. Monthly rent was \$750.00. The landlords collected a security deposit in the amount of \$375.00. There were no condition move in or move out inspection reports created in the course of this tenancy. The tenant provided her forwarding address in writing to the landlords on 31 May 2015.

On or about 12 June 2015, the landlords returned \$100.00 of the tenant's security deposit. The tenant had not attempted to deposit the cheque. I asked the tenant to attempt to deposit the cheque and inform the Residential Tenancy Branch and the landlords if she was unable to do so. I did not receive anything from the tenant indicating that she was unsuccessful.

The tenant did not provide written authorizations for the landlords to make any deductions from her security deposit. There are no outstanding orders of the Residential Tenancy Branch in respect of this tenancy.

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. 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.

The landlords do not have the tenant's authorization or authorization from the Residential Tenancy Branch to retain any amount from the tenant's security deposit. Accordingly, the tenant was entitled to return of the entire amount of her security deposit on or before 15 June 2015. As the landlords have failed to return the tenant's security deposit, they are required to pay compensation to the tenant in the amount of the tenant's security deposit.

As the tenant has been successful in this application, she is entitled to recover her filing fee from the landlords.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$614.00 under the following terms:

Item	Amount
Security Deposit	\$375.00
Less Returned Amount	-100.00
Subsection 38(6) Compensation	375.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$700.00

The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with 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 subsection 9.1(1) of the Act.

Dated: December 01, 2015

Residential Tenancy Branch

