



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD

Introduction

This hearing dealt with the tenant's application for authorization to obtain a return of all or a portion of her security deposit pursuant to section 38 of the *Residential Tenancy Act* (the Act).

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.

Each party admitted service of the opposing party's documents.

Scope of Application

The landlord's evidence appeared to advance a claim for damages against the tenant. At the hearing I confirmed with the landlord that he had not yet filed his own application for dispute resolution. I explained to the parties that the landlord's claim for damages could not be dealt with by way of response evidence, but rather must be the subject of its own application.

This decision does not prevent the landlord from filing his own application; however, the landlord is cautioned that this decision does not extend any timelines applicable to his application.

Residential Tenancy Policy Guideline, "17. Security Deposit and Set off" sets out that: Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
- If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;
- If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;

- If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;
- whether or not the landlord may have a valid monetary claim.

At the hearing I asked the tenant if she was waiving her right to doubling of the deposit. The tenant informed me that she was not.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of a portion of her security deposit? Is the tenant entitled to a monetary award equivalent to the amount of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the Act?

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 on or about 1 September 2012 and ended on or about 1 September 2014. Monthly rent of \$1,100.00 was due on the first. At the beginning of the tenancy, the landlord collected a security deposit in the amount of \$550.00, which he continues to hold.

The parties conducted a condition inspection at the beginning of the tenancy; however, no written report of the inspection was created.

The tenant provided her forwarding address in writing with her notice to end tenancy. The forwarding address was provided at some point in July 2014. The landlord confirmed receipt of the tenant's forwarding address.

Both parties confirmed that there are no outstanding orders of the Residential Tenancy Branch regarding this tenancy. The tenant did not authorize the landlord to retain all or any portion of her security deposit.

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 tenant provided her forwarding address in writing to the landlord in July 2014. The tenancy ended 1 September 2014. In accordance with subsection 38(1) of the Act the landlord had until 16 September 2014 to return the tenant's security deposit to her or file an application for dispute resolution (subject to the rules of extinguishment). The landlord did not complete either of these acts within fifteen days of the end of the tenancy. Pursuant to section 38 of the Act, the tenant has proven her entitlement to return of her security deposit and compensation equivalent to the amount of her security deposit.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,100.00 under the following terms:

Item	Amount
Return of Security Deposit	\$550.00
Subsection 38(6) Compensation	550.00
Total Monetary Order	\$1,100.00

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: January 28, 2016

Residential Tenancy Branch

