



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUMI HOLDINGS AND ROCKWELL PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, O, 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; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing by conference call and provided undisputed affirmed evidence. The landlord did not attend or submit any documentary evidence. The tenant stated that the landlord was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on September 21, 2015. The tenant has provided a copy of the Canada Post Customer Receipt Tracking number as confirmation. I accept the undisputed affirmed testimony of the tenant and find that the landlord was properly served with the notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on September 21, 2015.

Issue(s) to be Decided

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

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 respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant provided undisputed affirmed evidence that a tenancy agreement was signed to begin on July 28, 2015 and that a security deposit of \$1,050.00 was paid. The tenant has provided a copy of a "Customer Record of Draft Purchased" to the landlord for \$1,050.00 dated July 2, 2015 as proof of the security deposit payment.

The tenant stated that because of issues regarding the condition of the rental premises, possession of the rental unit was refused by the tenants.

The tenant stated that the landlord was provided their forwarding address in writing on August 12, 2015 via Canada Post Registered Mail. The tenant has provided a copy of the Canada Post Registered Mail Customer Receipt Tracking number as confirmation. The tenant has also provided a copy of the online search of the tracking number which shows a signature in receipt of the same package on August 13, 2015.

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 receipt of the tenant's forwarding address in writing.

I accept the undisputed affirmed evidence of the tenant and find that the landlord has failed to comply with section 38 of the Act. The landlord has not returned the \$1,050.00 security deposit nor has the landlord filed an application to dispute its' return.

Section 38 (6) of the Act states that the landlord is required to pay a monetary award which is the equivalent to the value of the security deposit in failing to comply.

As such, the tenant is entitled to the return of the original \$1,050.00 security deposit and \$1,050.00 pursuant to section 38 (6) for failing to comply with the Act. The tenant has established a total monetary claim of \$2,100.00.

Having been successful in their application, the tenants are also entitled to recovery of the \$50.00 filing fee.

Conclusion

I issue a monetary order in the tenants' favour under the following terms which allows the tenants to recover their original security deposit plus a monetary award equivalent to the value of their 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 Security Deposit	\$1,050.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the Act	1,050.00
Recovery of Filing Fee	50.00
Total Monetary Order	\$2,150.00

The tenants are 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 orders 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: March 31, 2016

Residential Tenancy Branch