



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MADISON VILLA ENT. LTD.
and [tenant name suppressed to protect privacy]

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.

The tenant attended the hearing via 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 via Canada Post Registered Mail on October 2, 2016 and has provided the Customer Receipt Tracking number in his direct testimony as proof of service. The tenant clarified that an online search of the Canada Post Website shows that the package was returned as unclaimed after attempts at service was made by Canada Post. Notice(s) were left to pick up the package and that the original package was returned to the sender notifying him of the unclaimed package. I accept the undisputed affirmed evidence of the tenant and find that the landlord was properly served as per sections 88 and 89 of the Act. The landlord is deemed to have received the package 5 days later as per section 90 of the Act.

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

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.

This tenancy began on October 28, 2012 on a fixed term tenancy ending on October 31, 2013 as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$920.00 payable on the 1st day of each month. A security deposit of \$460.00 was paid on October 17, 2012.

The tenant seeks a monetary order for \$920.00 which consists of:

\$460.00	Return of Original Security Deposit
\$460.00	Compensation for failing to comply with Sec. 38

The tenant stated that the tenancy ended on April 30, 2015 and that repeated attempts to request the return of the security deposit resulted in a letter sent in writing on September 3, 2015 via Canada Post to the landlord providing them with the tenant's forwarding address in writing. The tenant has submitted a copy of the signed letter as well as a copy of the Canada Post Online search of Registered Mail Service to the listed mailing address provided on the signed tenancy agreement.

The tenant stated that as of the date of this hearing, the landlord has not returned the \$460.00 security deposit nor does the landlord have permission to retain it. The tenant stated that he was not aware of any application filed by the landlord to dispute the return of the deposit.

Analysis

I accept the undisputed affirmed evidence of the tenant and find that the landlord was served with the tenant's forwarding address in writing on September 3, 2015 via Canada Post Registered Mail as shown by the tenant's supporting documents.

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. I find based upon the undisputed affirmed evidence of the tenant that the landlord failed to return the \$460.00 security deposit within the allowed timeframe as per section 38 of

the Act. The tenant has established a claim for the return of the original \$460.00 security deposit. No interest is payable.

Pursuant to section 38 (6) the landlord has failed to comply with section 38 by returning the \$460.00 security deposit within the allowed timeframe, nor has the landlord received permission from the tenant to retain it and the landlord has not filed an application for dispute resolution to dispute the return of it to the tenant. The landlord is required to pay a monetary award of \$460.00 to the tenant for failing to comply with the Act.

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 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 Security Deposit	\$460.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the Act	460.00
Recovery of Filing Fee	50.00
Total Monetary Order	\$970.00

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: April 14, 2016

Residential Tenancy Branch