



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* ("Act") for:

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and the tenant confirmed receipt of the landlord's written evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's written evidence.

Issues to be Decided

Is the tenant entitled to a monetary award equivalent to double 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*?

Is the tenant entitled to recover the filing fee for this Application from the landlord?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began at the end of March 2014 and ended on July 31, 2015. Monthly rent in the amount of \$750.00 was payable on the first day of each month. A security deposit of \$375.00 was paid by the tenant and the landlord continues to retain this deposit. No move-in or move-out condition inspection reports were completed for this tenancy. The tenant provided a written forwarding address to the landlord on August 23, 2015, by way of a letter that was sent by registered mail. The landlord did not have written permission to keep any amount from the tenant's security deposit. The landlord did not file an application for dispute resolution to retain any amount from the tenant's security deposit.

The tenant seeks a return of double the amount of his security deposit, totalling \$750.00, because the landlord failed to return the deposit in full or make an application for dispute resolution. The tenant also seeks to recover the \$50.00 filing fee paid for his Application.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the 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 section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, 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 (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the undisputed testimony of both parties at this hearing. The tenancy ended on July 31, 2015. The tenant provided a written forwarding address to the landlord on August 23, 2015 by registered mail, which is allowed under section 88 of the *Act*. The tenant did not give the landlord written permission to retain any amount from his security deposit. The landlord did not return the deposit or make an application for dispute resolution to claim against the deposit. The landlord's right to claim against the deposit for damage was extinguished by

sections 24 and 36 of the *Act*, for failure to complete move-in and move-out condition inspection reports for this tenancy.

Over the period of this tenancy, no interest is payable on the landlord's retention of the tenant's security deposit. In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to receive double the value of his security deposit, totalling \$750.00.

As the tenant was successful in his Application, I find that he is entitled to recover the \$50.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$800.00 against the landlord. The tenant is provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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 11, 2016

Residential Tenancy Branch