



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:

- a monetary order to obtain a return of all the security deposit pursuant to section 38 and 67; and
- 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 testimony. The landlord did not attend or submit any documentary evidence. The tenant provided evidence that the landlord was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on May 3, 2016. The tenant provided in his direct testimony the Canada Post Customer Receipt Tracking Number as confirmation of service in this manner. The tenant also stated that the notice of hearing package and the submitted documentary evidence was noted as "unclaimed" by the landlords and returned to the tenant after attempts at service were made. I accept the undisputed affirmed evidence of the tenant and find that the landlords were properly served as per section s88 and 89 of the Act. The landlords are 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 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 testimony that this tenancy began on March 8, 2015 on a month-to-month tenancy. The monthly rent was \$500.00 payable on the 1st day of each month and that a security deposit of \$250.00 was paid on May 5, 2015. The tenant also stated that the landlord only provided the 1st and last pages of the signed tenancy agreement.

The tenant stated that the landlords were given notice to end the tenancy via text message on February 22, 2016 and again in writing on February 27, 2016 to vacate the rental property on March 31, 2016. The tenant stated that his forwarding address in writing was provided to the landlord on April 5, 2016. The tenant stated that as of the date of this hearing the landlord has failed to return the \$ security deposit.

The tenant seeks a monetary claim of \$500.00 for the return of the \$250.00 security deposit and \$250.00 for failing to comply with the Act by repaying the security deposit or filing an application for dispute.

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.

I accept the undisputed affirmed evidence of the tenant and find that the landlord has failed to return the \$250.00 original security deposit. The tenant is entitled to recovery of the \$250.00 security deposit.

I also find that the landlord failed to comply with section 38 (1) of the Act by repaying the \$250.00 security deposit to the tenant is subject to section 38 (6) of the Act. The landlord has not returned the security deposit nor has the landlords made an application to dispute the return of the security deposit. The tenant is entitled to compensation of \$250.00.

The tenant is also entitled to recovery of the \$100.00 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 landlords' failure to comply with the provisions of section 38 of the Act:

Item	Amount
Return of Security Deposit	\$250.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the Act	250.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$600.00

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 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: June 15, 2016

Residential Tenancy Branch