



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- authorization to obtain a return of all or a portion of his security deposit pursuant to section 38;
- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover his filing fee for this application from the landlords pursuant to section 72.

The tenant attended the hearing. The landlord HH (the landlord) attended the hearing on behalf of both landlords. Those in attendance 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.

The tenant served the landlords with the dispute resolution package on or about 11 March 2016 by registered mail. The landlords admitted service of the package.

The tenant does not seek any additional remedy other than those in respect of his security deposit.

Preliminary Issue – Information Provided at Hearing

At the beginning of the hearing, I informed the parties of the law that I would have to provide in this matter. In particular I provided information on the following provisions and policy:

- extinguishment under section 24 and 35 of the Act and its effects on return of the security deposit pursuant to section 38 of the Act;
- page 3 of *Residential Tenancy Policy Guideline*, "17. Security Deposit and Set off" (Guideline 17); and

- the doubling provisions as set out in subsection 38(6) of the Act.

After providing this information, I asked the tenant if he was waiving compensation pursuant to subsection 38(6) of the Act. The tenant indicated he was not waiving compensation pursuant to subsection 38(6) of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of his security deposits? Is the tenant entitled to a monetary award equivalent to the amount of his security deposit as a result of the landlords' 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 landlords?

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 15 January 2015 and ended 16 December 2015. Monthly rent in the amount of \$1,700.00 was due on the first. The landlords collected a security deposit in the amount of \$850.00 in January 2015.

At the beginning of the tenancy, the landlords and tenant inspected the rental unit together. No report was created in respect of this inspection. The same process occurred at the end of tenancy.

In late 2015, the tenant provided his forwarding address to the landlord. The landlord returned \$700.00 of the security deposit to the tenant in early 2016.

The landlord testified as to damage to the rental unit that he alleges the tenant caused.

There are no prior orders of the Residential Tenancy Branch in respect of this tenancy. The tenant did not provide written authorization to the landlord to permit him to retain any amount from the security deposit.

Analysis

Pursuant to subsection 38(1) of the Act, the landlord had fifteen days from the later of the date the tenancy ends and the date he received the tenant's forwarding address

in writing to return the tenant's security deposit or file an application for dispute resolution claiming against the deposit. The tenancy ended 15 December 2015. The latest the landlords received the tenant's forwarding address was 31 December 2015. In accordance with subsection 38(1) of the Act, the landlords had until 15 January 2016 to return the tenant's security deposit in full. The landlords only returned \$700.00 of the security deposit.

Subsection 38(6) of the Act establishes a penalty where a landlord fails to comply with subsection 38(1) of the Act:

If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable...

Residential Tenancy Policy Guideline, "17. Security Deposit and Set off" describes how the doubling provisions operate where there has been a partial return of the security deposit. :

4. In determining the amount of the deposit that will be doubled, the following are excluded from the calculation:
 - any arbitrator's monetary order outstanding at the end of the tenancy;
 - any amount the tenant has agreed, in writing, the landlord may retain from the deposit for monies owing for other than damage to the rental unit ...;
 - if the landlord's right to deduct from the security deposit for damage to the rental unit has not been extinguished, any amount the tenant has agreed in writing the landlord may retain for such damage.
5. The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:
 - • Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.
 - The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ($\$800 - \$275 = \525).

[footnotes removed]

On the basis of section 38 and Guideline 17, the tenant is entitled to a monetary award of \$1,000.00 ($\$850.00 \times 2 - \700.00).

As the tenant has been successful in his application, he is entitled to recover his filing fee paid from the landlord.

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 Double Security Deposit	\$1,700.00
Less Portion Returned	-700.00
Recovery of Filing Fee for this Application	100.00
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: July 25, 2016

Residential Tenancy Branch