



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 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 (the tenant and his daughter) attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend the hearing 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 January 5, 2016. The tenant has submitted in confirmation a copy of the Canada Post Customer Receipt Tracking number and a printout of an online search of the service. The tenant stated that the notice of hearing package and the submitted documentary evidence were returned as "RTS" by Canada Post to the tenant. The tenant stated that Canada Post clarified that this meant the landlord was not accepting the package and for it to be returned to the sender. The tenant clarified that the address provided was one given as the dispute address from the landlord. The landlord has submitted a copy of a text message from the landlord when asked for a mailing address. 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. Although the landlord did not claim the package, the landlord is deemed to have been properly served as per section 90 of the Act 5 days later.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for 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 seeks a monetary claim of \$1,900.00 for the return of the security deposit.

The tenant provided undisputed affirmed evidence that there was a signed tenancy agreement in which the tenant paid the landlord a \$1,900.00 security deposit. The tenant stated that on October 29, 2015 a letter was served to the landlord giving notification the tenant would be vacating the rental unit on November 30, 2015. The tenant stated that after the tenancy ended the landlord was provided his forwarding address in writing in a letter dated December 15, 2015 requesting the return of the security deposit be sent to his new address. The tenant states that as of the date of this hearing the landlord has not returned the \$1,900.00 security deposit nor has the tenant been advised by the landlord that an application for dispute to dispute the return of the security deposit has been filed.

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 comply with section 38 of the Act by returning the \$1,900.00 security deposit as well as failing to make an application to dispute its return. I also find that the tenant provided his forwarding address in writing on December 15, 2015 after the tenancy ended on November 30, 2015. The tenant has established a monetary claim for return of the \$1,900.00 security deposit.

As well, the landlord having failed to comply with section 38 of the Act is also required to pay the tenant an amount equal to the \$1,900.00 security deposit pursuant to section 38 (6) of the Act.

The tenant has established a total monetary claim of \$3,800.00.

The tenant having been successful in his application is 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 landlord's failure to comply with the provisions of section 38 of the Act:

Item	Amount
Return of Security Deposit	\$1,900.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the Act	1,900.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$3,900.00

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: August 09, 2016

Residential Tenancy Branch