



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her pet damage deposit security deposit (the deposits) pursuant to section 38; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 1321 in order to enable the landlord to connect with this teleconference hearing scheduled for 1300. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that she served the landlord with the dispute resolution package on 24 February 2016 by registered mail. The tenant testified that she determined the landlord's residence as it was the return address on the letter enclosing the partial return of her security deposit. The tenant testified that she drove by the house and observed that the landlord's business was advertised outside the residence. The tenant provided me with a Canada Post tracking number. The tenant testified that she reviewed the delivery certificate for the posting. Someone signed the landlord's name for the package. On the basis of this evidence, I am satisfied that the landlord was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of the deposits? Is the tenant entitled to a monetary award equivalent to the amount of the deposits 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 all the documentary evidence, and the testimony of the tenant, 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 1 October 2014 and ended 31 December 2015. Monthly rent was \$1,550.00. At the beginning of the tenancy, the tenant remitted a pet damage deposit in the amount of \$775.00 and a security deposit in the amount of \$775.00.

The tenant testified that no condition inspection reports were created at the beginning or end of tenancy. The tenant testified that she did not agree in writing to the deduction of any amount from her security deposit for amounts other than damage to the rental unit.

On 31 December 2015, the tenant provided her forwarding address by text message.

On 5 January 2016, the landlord's agent (who is also the landlord's spouse) text messaged the tenant asking for the tenant's address for the purpose of sending the deposit. On 5 January 2016, the tenant provided her forwarding address by text message for a second time. The tenant also indicated that she had sent her forwarding address in an earlier text. On 5 January 2016, the landlord's agent acknowledged receipt of the forwarding address.

On 21 January 2016, the tenant received \$715.00 from the landlord to the tenant's forwarding address.

The tenant testified that the remaining amount has not yet been returned.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's deposits or file for dispute resolution for authorization to retain the deposits within 15 days of the end of a tenancy or receipt of the tenant's forwarding address in writing.

The tenancy ended 31 December 2015. The tenant sent her forwarding address by text message on 31 December 2015 and again on 5 January 2016. The landlord's agent acknowledged receipt of the tenant's forwarding on 5 January 2016. As the landlord's agent acknowledged service of the forwarding address, I order that the forwarding

address was sufficiently served pursuant to paragraphs 71(2)(b) and (c) of the Act on 5 January 2016.

Pursuant to subsection 24(2) of the Act, the landlord's right to claim for damage to the rental unit was extinguished by the landlord's failure to provide a condition inspection report at the beginning of tenancy. Pursuant to subsection 38(5) of the Act, the landlord was not entitled to retain any amount from the deposits based on the tenant's agreement for damage to the rental unit. The landlord did not have authorization in writing to keep any of the deposits in relation to claims for losses other than damage to the rental unit.

In accordance with subsection 38(1) of the Act, the landlord had until 20 January 2016 to return the full amount of the deposits to the tenant. The landlord did not return the full amount and only returned \$715.00. Accordingly, the tenant is entitled to return of the balance of the deposits in the amount of \$835.00 (\$1,550.00 - \$715.00).

As the landlord failed to comply with subsection 38(1) of the Act within the prescribed time, pursuant to subsection 38(6) of the Act, the landlord must pay the tenant double the amount of the deposits. The tenant is entitled to a further monetary amount of \$1,550.00.

As the tenant has been successful in this application, she is entitled to recover her filing fee in the amount of \$100.00.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$2,485.00 under the following terms:

Item	Amount
Return of Balance of Security Deposit	\$60.00
Return of Pet Damage Deposit	775.00
Subsection 38(6) Compensation	1,550.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$2,485.00

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: August 08, 2016

Residential Tenancy Branch