



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 authorization to obtain a return of all or a portion of his security deposit pursuant to section 38 and to recover the filing fee for this application pursuant to section 72.

The tenant testified that he served the landlord with his Application for Dispute Resolution ("ADR package") by registered mail. He provided Canada Post tracking information and a receipt in support of his testimony. He testified that he was able to verify the landlord had received and signed for the ADR package that included the Notice of Hearing. The landlord submitted evidence for this hearing at an earlier date but ultimately did not attend this hearing, although I waited until 1:49pm in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30pm. The tenant/applicant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to the return of all or a portion of his security deposit?
Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

This tenancy began on August 1, 2013 as a month to month tenancy with a rental amount of \$725.00 payable on the first of each month. The tenancy continued until December 31, 2015. The tenant testified that he provided the landlord with 5 weeks' notice that he intended to vacate the residence. The tenant provided undisputed testimony that he had provided the landlord with his forwarding address on the final day

of tenancy: December 31, 2015. The tenant testified that he provided the landlord with his forwarding address in writing.

The tenant provided evidence to show that the landlord returned \$273.25 of the tenant's \$362.50 security deposit paid by the tenant at the outset of this tenancy. The landlord mailed a cheque to the tenant including a note to indicate that he was deducting \$89.25 for carpet cleaning of the rental unit.

The tenant testified that the landlord moved in a new tenant on the same day that he vacated the residence: December 31, 2015. The tenant testified that the landlord did not advise him that his security deposit would be reduced on its return. The tenant testified that no condition inspection report was completed by the landlord or provided to the tenant. The tenant testified that he had the carpets cleaned on the final day of his tenancy. He was able to provide information about the carpet cleaning machine that he used from Walmart and the details of its purchase.

Analysis

I note that, as the landlord did not attend this hearing, the tenant's testimonial evidence was undisputed at this hearing. The tenant provided candid testimony and clear details with respect to the events at the end of his tenancy. I find that the tenant's testimony was both credible and reasonable. I accept the tenant's sworn, undisputed testimony.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposits, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, the undisputed testimony of the tenant is that the landlord was informed of the forwarding address in writing on December 31, 2015 (at the end of the tenancy). The landlord had 15 days after December 31, 2015 to take one of the actions outlined above. Based on the evidence before me, as of the date of this hearing, the landlord has not made an application to retain a portion of the tenant's security deposit and has not returned the full deposit.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security (and/or pet damage) deposit if “at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.” The tenant testified that he did not agree to allow the landlord to retain any portion of his security deposit. There is no evidence before me that the tenant has given the landlord written authorization at the end of this tenancy to retain any portion of his deposits, section 38(4)(a) of the *Act* does not apply to the tenant’s security deposit.

The tenant seeks return of his security deposit. I find there is sufficient proof that the landlord was deemed served in accordance with the *Act*. Despite being sufficiently served in accordance with the *Act* with the tenant’s application, he did not attend the hearing to dispute the tenant’s claim. Therefore, I find that the tenant is entitled to a monetary order including \$89.25 for the return of the remainder amount of his security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch’s Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant’s forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord’s right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant’s written agreement to deduct from the security deposit for damage to the rental unit after the landlord’s right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

Based on the undisputed, sworn evidence of the tenant before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant’s security deposit in full within the required 15 days. The tenant gave sworn testimony that he has not waived his right to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord’s failure to abide by the provisions of that section of the *Act*. In accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a total monetary order amounting to double the value of his security deposit with any

interest calculated on the original amount only. No interest is payable for this period. However, \$273.25 was previously returned to the tenant. The tenant is entitled to a monetary order as follows,

Item	Amount
Return of Security Deposit Remainder	\$89.25
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	362.50
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$501.75

Having been successful in this application, I find further that the tenant is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I grant the tenant a monetary order against the landlord in the amount of \$501.75.

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders 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: September 14, 2016

Residential Tenancy Branch