



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* ("Act") for:

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 23 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. "Witness SS" testified on behalf of the tenant at this hearing.

The tenant testified that the landlord was served with the tenant's application for dispute resolution hearing package ("Application") on April 15, 2016, by way of registered mail. The tenant provided a Canada Post tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's Application on April 20, 2016, five days after its registered mailing.

The tenant did not provide any documents with his Application prior to this hearing. I asked the tenant to provide me with copies of his tenancy agreement, his notice to vacate and his letter with a forwarding address, via facsimile after the hearing. I received the above documents from the tenant on September 8, 2016, and considered them in my decision. The tenant included a note with the above documents, stating that he could not locate his tenancy agreement but had signed one with the landlord. The tenant provided a copy of a tenancy agreement with another landlord, indicating that he was mistakenly referring to the wrong document during the hearing.

Issues to be Decided

Is the tenant entitled to a monetary award equivalent to double 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*?

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 the documentary evidence and the testimony of the tenant and witness SS, not all details of the submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

The tenant testified regarding the following facts. This month-to-month tenancy began on February 1, 2005 and ended on August 31, 2015. Monthly rent in the amount of \$775.00 was payable on the first day of each month. A security deposit of \$387.50 was paid by the tenant and the landlord continues to retain this deposit. Although the tenant did not provide a copy of the written tenancy agreement, I accept his affirmed testimony that he signed one with the landlord.

The tenant testified that no move-in or move-out condition inspection reports were completed for this tenancy. The tenant said that he provided a written forwarding address to the landlord by way of a letter, dated August 1, 2015, which he personally delivered to the landlord. The tenant provided a copy of this letter after the hearing. The tenant and witness SS both testified that witness SS personally delivered a letter, dated September 1, 2015, to the landlord with the tenant's forwarding address on it. The tenant provided a copy of this letter after the hearing.

The landlord did not have written permission to keep any amount from the tenant's security deposit. The landlord did not file an application for dispute resolution to retain any amount from the tenant's security deposit.

The tenant seeks a return of double the amount of his security deposit, totalling \$775.00. The tenant also seeks to recover the \$100.00 filing fee paid for his Application.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the 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 section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an

amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the undisputed testimony of the tenant and witness SS. The tenancy ended on August 31, 2015. The tenant provided a written forwarding address to the landlord by way of two letters, on August 1, 2015 and September 1, 2015, both hand delivered to the landlord. The tenant did not give the landlord written permission to retain any amount from his security deposit. The landlord did not return the deposit or make an application for dispute resolution to claim against the deposit.

In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to receive double the value of his security deposit, totalling \$775.00.

Over the period of this tenancy, \$13.71 is payable as interest on the landlord's retention of the tenant's security deposit from the start of this tenancy on February 1, 2005 until the date of this decision, September 26, 2016. As per Residential Tenancy Policy Guideline 17, this interest is calculated only on the original security deposit amount of \$387.50 and this amount is not doubled.

As the tenant was successful in his Application, I find that he is entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$888.71 against the landlord. The tenant is provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 26, 2016

Residential Tenancy Branch