



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, MNDC

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Only the tenant appeared at the hearing. The tenant provided affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The tenant testified and supplied documentary evidence that he served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on June 3, 2016, and deemed received under the Act five days later. The tenant provided tracking information from Canada Post to support that. I find the landlord has been served in accordance with the Act.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) 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, Evidence

The tenant's undisputed testimony is as follows. The tenancy began on February 1, 2016 for a fixed term that ended on April 30, 2016. The tenants were obligated to pay \$1800.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$900.00 security deposit. The tenant testified that although he requested to have condition inspection reports conducted at move in and move out, the landlord declined. The tenant testified that he also requested a copy of the tenancy agreement to which the landlord refused to provide. The tenant testified that he gave his forwarding address in writing personally to the landlord in the presence of a witness on April 30, 2016 and also by registered mail on May 16, 2016. The tenant testified that he also sent a follow up letter requesting his deposit. The tenant testified that he is seeking the return of double his deposit and the recovery of the filing fee.

Analysis

The tenant said he is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says 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.

As the landlord did not comply with the above section, I find that the tenant is entitled to the return of double his security deposit.

The tenant is also entitled to the recovery of his filing fee.

Conclusion

The tenant has established a claim for \$1900.00. I grant the tenant an order under section 67 for the balance due of \$1900.00. This order may be filed in the Small Claims 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: December 01, 2016

Residential Tenancy Branch