



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

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; and
- authorization to obtain a return of all of her pet damage and security deposits (the deposits) pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed that he received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on June 16, 2016. He also confirmed that he received her written evidence package. I am satisfied that the tenant served the above documents to the landlord in accordance with sections 88 and 89 of the *Act*.

As the landlord testified that he did not provide the tenant with a copy of his written evidence package, I have not considered that evidence in reaching my decision.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses arising out of this tenancy? Is the tenant entitled to a monetary award equivalent to double the value of her deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Background and Evidence

On April 11, 2015, the parties signed a periodic tenancy for a tenancy commencing on May 1, 2015. Monthly rent was set at \$700.00, payable in advance on the first of each month. The landlord continues to hold all of the tenant's \$350.00 pet damage deposit and \$350.00 security deposit, both paid on or about April 11, 2015.

On April 8, 2016, the tenant provided the landlord with her notice to end this tenancy. Although she advised the landlord she would be ending her tenancy on April 30, 2016, the parties agreed that she did not actually leave the rental unit until the following day.

The landlord confirmed the tenant's claim that no joint move-in or joint move-out condition inspection was conducted for this tenancy. The landlord also testified that he did not issue a written notice of final inspection to the tenant.

The landlord confirmed that he received a copy of the tenant's forwarding address in writing on or about May 18, 2016. He also confirmed that he has not returned any portion of the tenant's deposits, although he said he did offer to return \$350.00 of this amount to her shortly after she requested the return of her deposits.

The landlord maintained that the tenant did not provide proper notice to end her tenancy, nor did she leave the premises reasonably clean or free from damage. Although he said that he had submitted his own application for a monetary order and/or a request for authorization to retain the deposits on or about September 12, 2016, he had no record of that application as he had lost his cellphone. The Residential Tenancy Branch has no record of any such application from the landlord.

Analysis

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 deposits 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 deposits plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the deposits (section 38(6) of the *Act*). With respect to the return of the deposits, 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 landlord had 15 days after May 18, 2016 to take one of the actions outlined above. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a 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." As there is no evidence that the tenant has given the landlords written authorization at the end of this tenancy to retain any portion of her deposits, section 38(4)(a) of the *Act* does not apply to the tenant's deposits.

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 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 evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's deposits in full within the required 15 days. The tenant gave sworn oral testimony that she has not waived her rights 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*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the value of her deposits with interest calculated on the original amount only. No interest is payable.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms in the amount of \$1,400.00, equivalent to double the amount of her deposits:

Item	Amount
Return of Pet Damage & Security Deposits (\$350.00 + \$350.00= \$700.00)	\$700.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	700.00
Total Monetary Order	\$1,400.00

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: December 12, 2016

Residential Tenancy Branch