



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 of the *Act*; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were in attendance I confirmed that there were no issues with service of the tenant's application for dispute resolution and evidentiary materials. The landlord confirmed receipt of the tenant's materials. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with copies of the tenant's application and evidence.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order equivalent to double the value of the 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

The parties agreed on the following facts. The landlord and tenant signed a tenancy agreement on August 11, 2016 for a tenancy to commence on September 1, 2016. The tenant provided the landlord with a security deposit of \$400.00 and the first month's rent of \$800.00 on that date. The tenant subsequently found the rental unit is infested with parasites and cancelled the tenancy agreement. The tenant provided the landlord a letter dated August 22, 2016 stating that she would not be moving in to the rental unit. The landlord returned the first month's rent of \$800.00 to the tenant on that date but did not return the security deposit.

The landlord testified that she intends to keep the \$400.00 security deposit as she believes the tenant brought the parasites into the rental unit. The landlord was unfamiliar with the *Act*, the

Residential Tenancy Branch or the purpose of this hearing and stated that she is entitled to keep the deposit. The landlord eventually confirmed that she has not filed an application under the *Act* to retain the security deposit.

The tenant testified that she did not provide a forwarding address in the letter dated August 22, 2016 cancelling the tenancy as she did not have alternate accommodations. The tenant said that she is staying with friends and the service address on the tenant's application is not intended to be a permanent forwarding address. The tenant said that she should be entitled to a return of double the security deposit as compensation for the inconvenience to her and damages she has suffered by way of bites by the parasites.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy and or upon receipt of 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 as per section 38(4)(a).

The tenant testified that she has not provided the landlord with a forwarding address. The tenant said that the address for service on the tenant's application is temporary and was not provided to the landlord as a forwarding address. I find that the tenant has not yet provided a forwarding address in writing to the landlord. Therefore, the landlord's obligation under the *Act* to return the tenant's security deposit has not started. Once the tenant provides a forwarding address to the landlord in writing the landlord will then have 15 days to apply for dispute resolution or return the tenant's security deposit.

Conclusion

I dismiss the tenant's application with leave to reapply.

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: February 17, 2017

Residential Tenancy Branch

