



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with a tenant's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- a monetary order for return of pet damage deposit or security deposit; and
- recovery of the filing fee paid for this application from the landlord.

The landlord did not appear at the teleconference hearing which lasted 25 minutes. The tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the tenant was given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered.

The tenant testified that she sent the landlord a copy of the Notice of Hearing by registered mail. The tenant testified that she sent the registered mailing to the landlord's address on January 3, 2017. The tenant provided the Canada Post Tracking Number orally. Taking into account that the online registered mail tracking information supports the undisputed testimony of the tenant and in accordance with sections 89 and 90 of the Act, I find that the landlord has been deemed served with the Notice of Hearing as of January 8, 2017, the fifth day after the registered mailing.

### Issues to be Decided

- Is the tenant entitled to a monetary order for return of pet damage deposit or security deposit?
- Is the tenant entitled to recovery of the filing fee paid for this application from the landlord?

## Background

The undisputed testimony of the tenant established that the tenant entered into a 3 year fixed term tenancy on August 1, 2010 with an option to continue the tenancy on a month to month basis. Rent in the amount of \$2,860.00 is due on the first day of each month. The tenant testified that she provided a security deposit in the amount of \$1,360.00 sometime in July 2010 when she entered into the tenancy agreement. The tenant explained that the property was sold to the current landlord in August 2016.

The tenant testified that that the tenancy ended on November 30, 2016 in accordance with a settlement reached at a previous hearing. The file number for the previous hearing is indicated on the cover page for ease of reference.

The tenant testified that on November 30, 2016 the landlord attended the rental property for an inspection at which time the tenant provided the landlord with her forwarding address. The tenant testified that she wrote her forwarding address on the back of a receipt the tenant had issued the landlord. The tenant testified that she had issued the landlord a receipt for payment of the \$100.00 filing fee that the landlord owed the tenant pursuant to the previous settlement agreement. The tenant testified that the landlord asked the tenant to write her forwarding address down on the back of the receipt and the tenant complied.

The tenant testified that the landlord has not yet returned the security deposit. The tenant further testified that she did not authorize the landlord to keep the security deposit. The tenant's position is that the landlord failed to comply with the provisions of section 38 of the *Act*.

The tenant is seeking a monetary order in the amount of \$2,720.00 which includes the return of the original security deposit plus a monetary award equivalent to the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*.

The tenant is also seeking recovery of the \$100.00 filing fee for their application from the landlord.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

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 deposit 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 deposit, 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. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security 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."

As the landlord was served with the Notice of Hearing and did not attend the hearing, I consider this matter to be unopposed by the landlord. As a result, I find the tenant's application is fully successful as I find the evidence supports the tenant's claim and is reasonable.

I find that the tenant provided a security deposit in the amount of \$1,360.00 in July 2010 when the tenant entered into the tenancy agreement. I find that the tenancy ended on November 30, 2016. I find that the tenant provided her forwarding address to the landlord in writing on November 30, 2016.

In this case, I find that the landlord has not returned the tenant's security deposit in full within 15 days of receipt of the tenant's forwarding address in writing. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The tenant gave undisputed sworn testimony that the landlord has not obtained her written authorization at the end of the tenancy to retain any portion of the tenant's 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.*

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the original security deposit with interest calculated on the original amount only. No interest is payable over this period.

As the tenant has been successful in their application, I find that the tenant is also entitled to recover their filing fee from the landlord.

Accordingly, the tenant is entitled to a monetary order in the total amount of \$2,820.00 as follows:

| Item   | Amount             |
|--|--------------------|
| Return of Security Deposit   | \$ 1,360.00        |
| Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i> | \$ 1,360.00        |
| Filing Fee   | \$ 100.00          |
| <b>Total Monetary Order</b>  | <b>\$ 2,820.00</b> |

Conclusion

The tenant is granted a monetary Order in the amount of \$2,820.00 which is for the filing fee and the return of the tenant's original security deposit plus a monetary award equivalent to 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*. This monetary Order must be served on the landlord as soon as possible. Should the landlord fail to comply with this monetary Order, it may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 16, 2017

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Residential Tenancy Branch