



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- 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, pursuant to section 72.

The landlord and his English language translator, JFC and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that his translator had authority to assist him at this hearing. This hearing lasted approximately 35 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The tenant said that he did not receive the landlord's photographic evidence package. I did not receive it either. The landlord said that he personally served the package to the Residential Tenancy Branch ("RTB") on November 11, 2016. He said that he did not serve it to the tenant because the tenant refused to take it when they discussed the issue over the phone. I advised both parties that I could not consider the landlord's photographic evidence package at this hearing or in my decision because it was not served to the tenant as required by Rule 3.1 of the RTB *Rules of Procedure*, nor was it served to the RTB when the office was closed for a statutory holiday.

At the outset of the hearing, the tenant confirmed that the only monetary order he was seeking was for a return of double the amount of his security deposit plus the filing fee. Accordingly, the tenant's application for a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement is dismissed.

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 tenant's documentary evidence and the testimony of both parties, 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.

Both parties agreed to the following facts. This tenancy began on August 1, 2011 with the former landlord. The landlord purchased the rental unit on February 4, 2016 and assumed this tenancy. The tenancy ended on July 31, 2016. Monthly rent in the amount of \$2,560.00 was payable on the first day of each month. A security deposit of \$1,300.00 was paid by the tenant to the former landlord. The landlord received this deposit from the former landlord when he assumed the tenancy. The landlord returned \$588.50 from the security deposit to the tenant on August 11, 2016 and the tenant cashed the cheque thereafter. No move-in or move-out condition inspection reports were completed for this tenancy. The tenant provided a written forwarding address to the landlord on August 19, 2016, by way of a letter that was sent by registered mail. The landlord acknowledged receipt of this letter. The landlord did not have written permission to keep any amount from the security deposit. The landlord did not file an application for dispute resolution to retain any amount from the security deposit.

The tenant seeks a return of double the amount of his security deposit, minus the \$588.50 portion returned to him, because the landlord failed to return the deposit in full or make an application for dispute resolution. The tenant also seeks to recover the \$100.00 filing fee paid for this 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 both parties at this hearing. The tenancy ended on July 31, 2016. The tenant provided a written forwarding address to the landlord on August 19, 2016 by registered mail, which is allowed under section 88 of the *Act*. The landlord acknowledged receipt of this forwarding address. The tenant did not give the landlord written permission to retain any amount from his security deposit. The landlord did not return the full deposit to the tenant on August 11, 2016 and did not file an application for dispute resolution to claim against the deposit. The landlord's right to claim against the deposit for damage was extinguished by section 36 of the *Act*, for failure to complete a move-out condition inspection report for this tenancy.

Over the period of this tenancy, no interest is payable on the landlord's retention of the tenant's security 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 \$2,600.00, minus the portion returned to him of \$588.50, for a balance owing of \$2,011.50.

As the tenant was mainly 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 \$2,111.50 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.

The tenant's application for a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement is dismissed.

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 23, 2017

Residential Tenancy Branch

