



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* (the *Act*) for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 1:55 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The tenant provided sworn, undisputed testimony that she had served the landlord with her application for dispute resolution hearing package ("Application") and evidence by way of registered mail on January 21, 2017 and February 4, 2017, as the first package was returned to her as "refused". Section 89(c) of the *Act* allows the applicant to serve the respondent "by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord". In this case, the tenant had sent the registered mail to the address listed on the written residential tenancy agreement. Accordingly, I find that the tenant had complied with section 89(c) of the *Act*. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlord was deemed served with the Application and evidence.

Issues(s) to be Decided

Is the tenant entitled to the return of her security deposit pursuant to section 38 of the *Act*?

Is the tenant entitled to a monetary award equivalent to double 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*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant provided the following sworn, undisputed testimony as the landlord did not attend the hearing. This month-to-month tenancy began on August 1, 2010, with monthly rent set at \$835.00. The landlord had collected a security deposit of \$415.00 from the tenant, and still continues to hold that deposit. The tenant had moved out on June 30, 2016, with a move-out inspection completed on June 29, 2016.

The tenant testified that both parties agreed that the tenant's security deposit would be returned to her, minus \$30.00 for painting. The tenant submitted a copy of a form in her evidence from the landlord, indicating that \$30.00 was authorized by her to be deducted from the security deposit for painting. The form is dated June 29, 2016 and the tenant had completed the portion of the form indicating her forwarding address.

The tenant testified that she had made repeated attempts to contact the landlord, with no success. The tenant tried calling the manager several times over the last four months, but received no reply. The tenant had also attempted to send a registered letter to a different address listed on a Notice of Rent Increase, but had received no reply.

The tenant testified that she had not received any portion of her security deposit from the landlord. She did not give written authorization to allow the landlord to retain the security deposit, except for the \$30.00.

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 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."

In this case, I find that the landlord has not returned the tenant's security deposit within 15 days of the end of this tenancy, June 30, 2016. 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 had not obtained their written authorization at the end of the tenancy to retain more than \$30.00 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; ...*
- *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, minus the \$30.00 the tenant had authorized the landlord to retain. No interest is payable over this period. As the tenant has been successful in her application, I find that the tenant is also entitled to recover her filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms which allows the tenant to recover 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 had authorized the landlord to retain \$30.00 of the security deposit, which will be deducted from the order. The tenant is also authorized to recover \$100.00 for the filing fee.

Item	Amount
Return of Security Deposit	\$415.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	415.00
Recovery of Filing Fee	100.00
Portion of the Security Deposit Tenant Authorized the Landlord to Retain	-30.00
Total Monetary Order	\$900.00

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of 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.

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: March 27, 2017

Residential Tenancy Branch