



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:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence. The tenant stated that the landlord was served with the notice of hearing package and the submitted document evidence on September 24, 2016 via Canada Post Registered Mail. The tenant has provided a copy of the Canada Post Registered Mail Receipt and a copy of the Tracking label as confirmation. The tenant provided undisputed affirmed testimony that the package was returned as "refused" by the recipient. I accept the undisputed affirmed evidence of the tenant and find that the landlord has been properly served as per section 88 and 89 of the Act. Although the landlord "refused" the package, I find that the landlord has been sufficiently deemed served 5 days later on September 29, 2016 as per section 90 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant seeks a monetary claim of \$1,100.00 which consists of:

\$550.00	Return of Original Security Deposit
\$550.00	Failing to Comply with Section 38 of the Act

The tenant provided undisputed affirmed evidence that this tenancy began on July 1, 2008 on a month-to-month basis as per a verbal agreement. The monthly rent was \$1,100.00 payable on the 1st day of each month. A security deposit of \$550.00 was paid in June of 2008.

The tenant stated that the tenancy ended on July 28, 2015 in compliance with the landlord's request to occupy the rental unit himself. The tenant stated that she provided her forwarding address in writing and a request for return of the \$550.00 security deposit to the landlord via Canada Post Registered Mail on March 30, 2016. The tenant has submitted a copy of the Canada Post Customer Receipt and the tracking label as confirmation.

The tenant stated no permission was given to the landlord to retain the security deposit nor is she aware of the landlord filing an application for dispute to retain it.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a 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 subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, it is clear based upon the undisputed affirmed evidence of the tenant that the tenancy ended on July 28, 2015 and that the landlord was provided her forwarding address in writing for the return of the \$550.00 security deposit on March 30, 2016 via Canada Post Registered Mail. I find that the landlord has failed to return the original \$550.00 security deposit. The tenant has established a claim for return of the original \$550.00 security deposit.

As of the date of this hearing the landlord has not returned the \$550.00 security deposit and as such is liable to an amount equal to the \$550.00 security deposit as per section 38 (6) of the Act. The tenant is entitled to compensation as the landlord has failed to comply with the Act.

The tenant has established a total monetary claim of \$1,100.00.

The tenant having been successful in her application is entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$1,200.00.

This order must be served upon the tenant. Should the landlord fail to comply with the order, the 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 23, 2017

Residential Tenancy Branch