



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

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

- authorization to obtain a return of all or a portion of their security and pet deposit pursuant to section 38; and

Only the tenant appeared at the hearing. The tenant provided affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The tenant testified that the landlord was personally served with the Notice of Hearing Documents on September 28, 2016 in the presence of her son IK who also participated in the teleconference. The landlord submitted documentation for this hearing event though they did not attend. Based on the above I find that the landlord has been served in accordance with section 89 of the Act and the hearing proceeded in their absence.

Issue to be Decided

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*?

Background, Evidence

The tenant's undisputed testimony is as follows. The tenancy began on November 1, 2014 and ended on August 31, 2015. The tenants were obligated to pay \$950.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$475.00 security deposit and a \$125.00 pet deposit. The tenant testified that the landlord told her that they were not going to return the deposits because of damage she caused in the unit, to which the tenant disputes. The tenant testified that she provided her forwarding address in writing to the landlord in person on November 3, 2015. IK gave testimony that he witnessed his mother hand their forwarding address to the landlord on November 3, 2015. The tenant is seeking the return of double her deposits $\$600.00 \times 2 = \1200.00 .

Analysis

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

The tenant said he is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the undisputed testimony of the tenant, her witness and their documentary evidence, I find that the landlord has not acted in accordance with Section 38 of the Act and that the tenant is entitled to the return of double his deposits in the amount of \$1200.00.

Conclusion

The tenant has established a claim for \$1200.00. I grant the tenant an order under section 67 for the balance due of \$1200.00. This order may be filed in the Small Claims 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 28, 2017

Residential Tenancy Branch