



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FF MNSD

Introduction

This hearing was convened in response to an application by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The tenant requested:

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

Both the landlord and the tenant appeared at the hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord was represented at the hearing by agent W.S. (the agent).

The tenant stated that she sent the landlord a copy of her Application for Dispute Resolution and her Monetary Order via Registered Mail on February 23, 2017. The agent acknowledged receipt of the package. Pursuant to sections 88 and 89 of the *Act*, the landlord is found to have been served with these documents.

Issue(s) to be Decided

Is the tenant entitled to a return of the security deposit? If so, should it be doubled?

Can the tenant recover the filing fee for this application?

Background and Evidence

The tenant provided testimony to the hearing that this tenancy began in October 2012 and ended on February 28, 2016. Rent was \$950.00 per month and a security deposit of \$475.00 continues to be held by the landlord.

The tenant has applied for a Monetary Order of \$950.00. This amount represents double the value of her security deposit which has not yet been returned to her.

During the course of the hearing, the tenant provided testimony that upon the completion of her tenancy the landlord provided her with a cheque for \$136.25 in satisfaction of her security deposit. The landlord explained that this amount represented the security deposit less what he

had to spend on carpet cleaning, paint and general maintenance and cleaning. The landlord acknowledged that he did not seek an order from the *Residential Tenancy Branch* to retain any amount of the tenant's security deposit.

Shortly after receiving the check for \$136.25, the tenant returned it to the landlord.

The landlord testified that he "can't remember who" but someone informed him of the tenant's forwarding address. The landlord also explained that he had received a text message from the tenant on March 26, 2016 containing her forwarding address. The tenant explained that she provided written notice of her forwarding address to the landlord "at the end of January 2016" when she first informed him of her desire to vacate the rental unit. As part of her evidentiary package, the tenant produced a letter dated February 3, 2016 which was addressed to the landlord and contained her forwarding address.

Analysis – Monetary Order

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit. One of these actions must occur within 15 days after the *later* of either the end of the tenancy and/or upon receipt of the tenant's 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. 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 as per section 38(4)(a) of the *Act*.

No evidence was produced at the hearing that the landlord applied for dispute resolution within 15 days of receiving a copy of the tenant's forwarding address on February 3, 2016 or following the conclusion of the tenancy on February 28, 2016. If the landlord had concerns arising from the tenant's damage to the rental unit following the conclusion of this tenancy, the landlord should have addressed these matters within 15 days of receiving a copy of the tenant's forwarding address or within 15 days of the end of tenancy.

The landlord acknowledged that he kept \$338.50 of the tenant's security deposit because of damage to the rental unit. The landlord did not receive 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 as per section 38(4)(a) of the *Act*. He also explained that the cheque of \$136.25 he offered the tenant in satisfaction of her security deposit was returned to his office.

The landlord therefore continues to hold the tenant's security deposit of \$475.00. The landlord has not returned the tenant's security deposit in full as required by the *Act* nor has he filed for dispute resolution. The landlord is therefore required to pay double the value of the security deposit, pursuant to section 38(6)(b) of the *Act*. I find that the tenant is entitled to receive double the value of his security deposit, totalling \$950.00, from the landlord. I am making a Monetary Order in the tenant's favour in the amount of \$950.00 for this item.

As the tenant was successful in her application, she is entitled to recovery of the \$100.00 filing fee.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1,050.00 against the landlord.

Item	Amount
Return of Security Deposit x 2	\$950.00
Return of Filing Fee	100.00
Total =	\$1,050.00

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.

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: April 6, 2017

Residential Tenancy Branch