



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 double the amount of the security deposit, pursuant to section 38 of the *Act*.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant was represented by her authorized agent (the "tenant"). The landlord was assisted by her agent and interpreter who spoke on her behalf (the "landlord").

As both parties were in attendance I confirmed that there were no issues with service of the tenant's application for dispute resolution (the "tenant's application") or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the tenant's application and their respective evidence.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order equivalent to double the value of the security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Background and Evidence

The parties agreed on the following facts. This fixed term tenancy began in July, 2016 and ended on December 31, 2016. The monthly rent was \$2,000.00 payable on the first of each month. The tenant provided the landlord with a security deposit of \$1,000.00 which is still held by the landlord.

The tenant testified that a forwarding address was not provided to the landlord prior to filing the tenant's application. The tenant confirmed that the address for service provided in the tenant's application is the tenant's forwarding address.

Analysis

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 15 days after the later of the end of a tenancy and or upon receipt of 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 as per section 38(4)(a).

The tenant testified that the first time the forwarding address was provided to the landlord was on the tenant's application. In accordance with section 71(2)(b) of the *Act* I find that the tenant has served the landlord with the forwarding address on April 3, 2017, the date of the hearing.

I find that the landlord's obligation under section 38 of the *Act* to apply for dispute resolution or return the tenant's security deposit within 15 days of being served with the forwarding address has only started as of the date of the hearing, April 3, 2017. Accordingly, I find the tenant's application to be premature and I dismiss it with leave to reapply.

Conclusion

I find that the landlord has been served with the tenant's forwarding address on April 3, 2017, the date of the hearing.

I dismiss the tenant's application with leave to reapply.

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