



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* ("Act") for:

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

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

Issue to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of her security and pet 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, Evidence

The tenant's testimony is as follows. The tenancy began on May 1, 2016 and ended on August 31, 2016. The tenants were obligated to pay \$780.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$350.00 security deposit and a \$150.00 pet deposit. The tenant testified that neither a written condition inspection report was conducted at move in or moves out. The tenant testified that she sent her forwarding address by e-mail on September 2, 2016. The tenant stated that the landlord returned \$436.50 but withheld \$63.50 without her consent. The tenant is seeking the return of double her deposits (\$1000.00) minus the amount already returned -436.50 = \$563.50. The tenant is also seeking the recovery of the \$100.00 filing fee.

The landlord gave the following testimony. The landlord did not dispute the testimony of the tenant. The landlord testified that he received the tenant's forwarding address on September 5, 2016 and advised her of the reason as to why he didn't return the full amount. The landlord testified that the tenant damaged a screen window covering and withheld \$63.50 to replace it. The landlord testified that he did not have the tenants' written permission to withhold any of the deposit but felt justified because of the damage. The landlord testified that he did not file an application for dispute resolution to retain any portion of the deposit.

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 she 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 testimony of both parties and the documentary evidence before me 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 her deposits in the amount of \$1000.00 - \$436.50 = \$563.50.

The tenant is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The tenant has established a claim for \$663.50. I grant the tenant an order under section 67 for the balance due of \$663.50. 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: April 04, 2017

Residential Tenancy Branch