



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:

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

The landlord did not attend this hearing which lasted approximately 15 minutes. The tenant attended and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that the tenant's application for dispute resolution dated March 15, 2017 was served on the landlord, at the address provided by the landlord, by registered mail on that date. The tenant provided the Canada Post tracking numbers as evidence of service. I find that the landlord was deemed served with the tenant's application package in accordance with sections 88, 89 and 90 of the *Act* on March 20, 2017, five days after mailing.

Issue(s) to be Decided

Is the tenant entitled to a monetary award 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*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant provided undisputed testimony regarding the following facts. The tenant entered into a tenancy agreement in January, 2017 for a tenancy to commence on February 1, 2017. The tenant paid a security deposit of \$425.00 on January 24, 2017. The tenant subsequently cancelled the tenancy agreement and has never occupied the rental unit. The tenant provided the landlord a letter dated February 8, 2017 with a forwarding address for the security deposit to be returned. The landlord has failed to return the security deposit. The tenant testified that she has not given written permission that the landlord may retain any portion of the security deposit paid for this tenancy.

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 or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must 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 permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the tenants' undisputed evidence that the tenant provided written notice of the forwarding address on February 8, 2017. I accept the undisputed evidence of the tenant that the landlord failed to return the full security deposit to the tenants within 15 days of February 8, 2017, the time frame granted under section 38 (1)(c) of the *Act* nor did the landlord make an application claiming against the security deposit during that period.

Based on the undisputed evidence before me, I find that the landlord has failed to return the tenant's security deposit in full or file an application claiming against the amount within the 15 days of February 8, 2017, provided under section 38(1)(c) of the *Act*. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a \$850.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

As the tenant was successful in their application she may also recover the \$100.00 filing fee.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$950.00 under the following terms, which allows the tenant to recover their security deposit, and the filing fee for their application:

Item	Amount
Double Security Deposit	\$850.00
Filing Fees	\$100.00
Total Monetary Order	\$950.00

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: May 25, 2017

Residential Tenancy Branch