



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC 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 their security deposit pursuant to section 38;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 2:10 p.m. to enable the landlord to participate in this scheduled hearing for 2:00 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant provided sworn, undisputed testimony that they had served the landlord with the application for dispute resolution hearing package ("Application") and evidence by way of registered mail on March 11, 2017. A tracking number was provided in the tenant's evidence. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlord was deemed served with the Application and evidence on March 16, 2017, five days after mailing.

Issues(s) to be Decided

Is the tenant entitled to the return of the tenant's security deposit pursuant to section 38 of the *Act*?

Is the tenant entitled to a monetary order for money owed under the *Act*, regulation or tenancy agreement?

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

Background and Evidence

The tenant provided the following sworn, undisputed testimony as the landlord did not attend the hearing. This tenancy began in July of 2010, and ended on June 30, 2016. The landlord held a

\$1,000.00 security deposit, which was paid in July of 2010. The tenant provided the landlord with a forwarding address by email on July 3, 2017. A copy of this email was included in the tenant's evidence. The landlord retained \$32.48, and returned the rest of the security deposit to the tenant. The tenant testified that he had never consented to the landlord's retention of any portion of the security deposit.

The tenant is requesting the return of the security deposit, as well as a monetary order for the cost of the carpet cleaning incurred by the tenant as part of this tenancy. The tenant submitted an invoice, dated June 30, 2016, for \$147.00 to support the tenant's claim. The tenant also applied for the loss of wages the tenant incurred as part of this dispute in the amount of \$880.00 (\$55/hour x 16 hours), as the tenant alleges that the landlord had lied in his testimony.

A previous hearing was held on January 26, 2017, and the Arbitrator ordered that the tenant's application for the return of the security deposit be dismissed with leave to reapply as the Arbitrator was not satisfied that sufficient evidence was provided to demonstrate that a forwarding address was provided in writing to the landlord, at the end of the tenancy, in accordance with section 38 of the *Act*.

The Arbitrator dismissed the tenant's application to recover the cost of the carpet cleaning. The tenant applied for a Review Consideration on the grounds that the original Decision was obtained by fraud. The matter was reviewed and dismissed by an Arbitrator on February 14, 2017 on the grounds that the tenant did not provide sufficient evidence to support the tenant's application for review.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In her January 28, 2017 decision on the tenant's previous application referenced on the title page of this decision, the arbitrator who heard this matter made the following final and binding determination that the tenant's forwarding address was provided to the landlord in writing:

On the basis of the undisputed evidence I find the Landlord received a forwarding address for the tenant, in writing, when the Landlord was served with the Tenant's Application for Dispute Resolution.

As the previous arbitrator has made this final and binding finding that the landlord received the tenant's forwarding address in writing, the legal principle of *res judicata* prevents me from making a different decision on this aspect of the issue currently before me. This legal principle establishes that once a matter has already been conclusively decided, it cannot be decided again.

Under these circumstances, I find that the landlord has not returned all of the tenant's security deposit within 15 days of the tenant's provision of their forwarding address. The tenant provided an email in evidence to support that the landlord had received the address. There is no question in this case that the landlord received the tenant's forwarding address as there is undisputed evidence that the landlord returned all but \$32.48 of the tenant's security deposit to the tenant. Even after the tenant's previous application to obtain recovery of the remainder of the security deposit was dismissed with leave to reapply, the landlord did not return the remainder of the tenant's security deposit. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The tenant gave undisputed sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain the \$32.48.

In accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a monetary award equivalent to the value of the original deposit, plus the \$32.48 still retained by the landlord.

In regards to the tenant's monetary application for the cost of the carpet cleaning, I find that this current application is *res judicata* meaning the matter has already been conclusively decided and cannot be decided again. Accordingly, I dismiss this portion of the tenant's monetary claim.

The tenant also filed for monetary compensation for the wage loss incurred as part of this dispute. The tenant did not provide any supporting invoices, pay stubs, or statements to support this claim, and in the absence of these documents I find that the tenant did not provide sufficient evidence to support this claim. Accordingly, I dismiss this portion of the tenant's application.

I find that the tenant is entitled to recover the filing fee for this application.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms which allows the tenant to recover the portion of the original security deposit retained by the landlord plus a monetary award equivalent to 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* and the filing fee:

Item	Amount
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	\$1,000.00
Return of the Security Deposit Retained by the Landlord	32.48
Filing Fee	100.00
Total Monetary Order	\$1,132.48

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of 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.

The remainder of the tenant's application is dismissed.

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: June 26, 2017

Residential Tenancy Branch