



Dispute Resolution Services

Page: 1

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:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover her filing fee for this application from the landlords pursuant to section 72.

The tenant attended the hearing via conference call and provided undisputed affirmed testimony. The landlords did not attend or submit any documentary evidence. The tenant stated that the landlords were served with the notice of hearing package and the initial documentary evidence via Canada Post Registered Mail on March 22, 2017 and has submitted a copy of the Canada Post Customer Receipt Tracking label and receipt as confirmation of service. The tenant stated that the package was returned by Canada Post as "unclaimed". I accept the undisputed affirmed evidence of the tenant and find that the landlords have been properly served as per sections 88 and 89 of the Act. Although the landlords failed to claim the package, I find pursuant to section 90 of the Act that the landlords are deemed to have received the package 5 days later on March 27, 2017.

The tenant also provided late evidence submitted to the Residential Tenancy Branch on August 17, 2017. The tenant clarified that the landlords were not served with this package as they had failed to claim the notice of hearing package. I find that as the landlords were not served with the late evidence package that this package is excluded from consideration for this hearing.

At the outset extensive clarification was required of the tenant to explain her application for dispute. The application was filed for return of the security deposit and recovery of the filing fee. The notations on the application also mention "painting premises" costs

for a total monetary claim of \$2,200.00. The tenant clarified that \$300.00 of the security deposit was withheld by the landlord without permission. The tenant failed to complete a monetary worksheet or provide sufficient details of this additional monetary claim. I find that the tenant has failed to properly present a clear indication of the monetary order request. As such, this hearing shall proceed only on the tenant's request for return of double the security deposit and recovery of the filing fee. The remaining portions are dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant provided undisputed affirmed testimony that his tenancy began on April 1, 2016 on a month-to-month basis as per a signed tenancy agreement. The monthly rent was \$2,000.00 payable on the 1st day of each month. A security deposit of \$1,000.00 was paid on April 1, 2016.

The tenant clarified that the tenancy ended on February 26, 2017 and that the landlord was provided her forwarding address in writing in a handwritten note on January 29, 2017 for the return of her entire deposit of \$1,000.00. The tenant stated that the landlord withheld \$300.00 from the tenant without her permission.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a 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 subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, I accept the undisputed affirmed evidence of the landlord and find that the landlord was provided with the tenant's forwarding address in writing for the return of

the entire \$1,000.00 security deposit and that the landlord withheld \$300.00 from the tenant without permission. There is no evidence before me that the landlord has filed an application for dispute of the return of the security deposit to the tenant. As such, I find that the tenant is entitled to the return of the \$300.00 held by the landlord.

I also find that as the landlord has failed to comply with section 38 (1) of the Act that the landlord is liable to an amount equal to the value of the \$1,000.00 security deposit.

The tenant having been successful in her application is entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$1,400.00 which consists of:

\$300.00	Return of withheld amount of Security Deposit
\$1,000.00	Compensation as per Sec. 38(6) of the Act.
\$100.00	Recovery of Filing Fee

This order must be served upon the landlords. Should the landlords fail to comply with this order, the 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: August 18, 2017

Residential Tenancy Branch