



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, 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;
- an Order that the landlords comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The landlords did not attend this hearing which lasted approximately 10 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that she served her application for dispute resolution and evidentiary materials on each of the landlords by registered mail on April 28, 2017. The tenant provided two Canada Post tracking numbers as evidence of service. I find that the landlords were deemed served with the tenant's application for dispute resolution and evidentiary materials on May 3, 2017, five days after mailing in accordance with sections 88 89, and 90 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act* entitled to recover the filing fee of this application from the landlords?

Background and Evidence

The tenant provided undisputed evidence regarding the following facts. This tenancy began in December, 2014 and ended on February 28, 2017. A security deposit of \$650.00 and a pet

damage deposit of \$500.00 were paid at the start of the tenancy and has not been returned to the tenant. No condition inspection report was prepared at either the start or the end of the tenancy.

The tenant provided a forwarding address in writing to the landlords by a letter mailed on March 2, 2017. The tenant testified that she has not provided the landlords with any authorization that they may retain any portion of the security or pet damage deposit.

The tenant testified that the landlords provided her with a cheque for \$1,000.00 dated March 20, 2017 but as it was not for the full amount she has not cashed the cheque. The tenant said that the landlords have been unresponsive and she was unable to determine what the amount deducted by the landlords is for.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security and pet damage deposit in full or file for dispute resolution for authorization to retain the deposits 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 and pet damage 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 deposits as per section 38(4)(a).

I accept the undisputed evidence that the tenant provided written notice of the forwarding address by a letter sent on March 2, 2017. I find that pursuant to sections 88 and 90 of the *Act*, the landlord is deemed to have received the forwarding address on March 7, 2017, five days after mailing. I accept the undisputed evidence that the landlords did not return the full security and pet damage deposit, did not make an application for authorization to retain any portion of the deposits nor did they have written authorization from the tenants that they may retain any portion of the security or pet damage deposit.

In addition, the tenant testified that no condition inspection report was prepared at the start of the tenancy. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

...

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Accordingly, I also find that the landlords have extinguished any right to claim against the security and pet damage deposit by failing to prepare a condition inspection report at the start of the tenancy.

Based on the undisputed evidence before me, I find that the landlords have not filed an application to retain the security and pet damage deposit within the 15 day time limit and have failed to return the tenant's security and pet damage deposit in full. 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 landlords' failure to abide by the provisions of that section of the *Act*. I accept the tenant's evidence that while they received a cheque from the landlords for the amount of \$1,000.00, they have not cashed and accepted the payment. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a \$2,300.00 Monetary Order, double the value of the security deposit and pet damage deposit paid for this tenancy. No interest is payable over this period.

As the tenant's application was successful I also find that they are entitled to recover the \$100.00 filing fee for this application.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$2,400.00 against the landlords. The tenant is provided with a Monetary Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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: September 20, 2017

Residential Tenancy Branch