



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD OLC FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

Issues(s) to be Decided

Is the tenant entitled to monetary compensation for loss other money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to a monetary award for the return of their security deposit?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

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

Background and Evidence

This month-to-month tenancy began on September 1, 2015, with monthly rent set at \$690.00, payable on the first of the month. Rent was increased to \$706.00 effective December 1, 2016. The landlord had collected a security deposit and pet damage deposit in the amount of \$345.00 for each deposit at the beginning of the tenancy. The tenant moved out on April 2017, and the landlord returned only \$300.00 to the tenant. The tenant provided his forwarding address on May 12, 2017, and requested the return of the remaining portion of his deposits.

The tenant testified that he left the suite in reasonably clean condition, and he did not give permission for the landlord to retain any of his deposit.

The tenant applied for monetary compensation in the amount of \$1,281.79 as set out in the table below.

Item	Amount
Registered Mail for Serving Application	\$10.50
DVD for evidence	9.47
Cost of Gas	81.82
Return of Remaining Security and Pet Damage Deposit	390.00
Compensation for Landlord's failure to return deposit	690.00
Filing Fee	100.00
Total Monetary Order Requested	\$1,281.79

The landlord testified that he is entitled to keep the \$390.00 in compensation for the tenant's failure to properly clean the suite. The landlord testified in the hearing that the tenant had prevented him from performing a proper move-out inspection as the tenant was intimidating. The tenant testified that he had attended the move-out inspection as required by the Act, and disputes the landlord's claims that he was intimidating and prevented the landlord from doing a proper inspection. The tenant testified that the landlord failed to perform a move-in inspection at the beginning of the tenancy as required by section 23(1) of the Act.

The landlord's witness, KB, testified in the hearing that she was present for the inspection and that the tenant had left dirt and cat hair in the fridge, grease behind the stove, and holes in the walls. The landlord testified that the tenant also failed to properly clean the bath tub and dishwasher.

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 tenants 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 this case, I find that the landlord had not returned the tenant's security deposit in full within 15 days of receipt of the tenant's forwarding address in writing. 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 sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain any portion of the tenant's security deposit.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to the return of the remaining portion of his pet damage and security deposit (\$390.00), as well as compensation equivalent to these deposits (\$690.00) for the landlord's failure to comply with the *Act*.

The tenant applied for further compensation from the landlord for the costs associated with dealing with this matter. Section 72 of the *Act* only allows me to allow the tenant to recover the filing fee, and not the other associated costs of filing a dispute resolution application. Accordingly, I am not granting the tenant's application for further compensation.

As the tenant has been successful in his application, I find that the tenant is also entitled to recover the filing fee from the landlord.

As this tenancy is now over, I am dismissing the tenant's application for the landlord to comply with the *Act*, regulation, or tenancy agreement.

Conclusion

I issue a \$1,180.00 Monetary Order in the tenant's favour under the following terms which allows the tenant to recover the portion of the security deposit and pet damage deposit retained by the landlord, plus a monetary award equivalent to the value of the deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*. The tenant is also entitled to recover the cost of the filing fee for this application.

Item	Amount
Return of Security & Pet Damage Deposit	\$390.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	690.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$1,180.00

The tenant is provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlord(s) 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: September 15, 2017

Residential Tenancy Branch