



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

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.

ZY ('tenant') appeared on behalf of the tenant in this hearing, and was given full authority to do so. 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's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The tenant's agent provided sworn, undisputed testimony that the landlord was served with the tenant's application for dispute resolution hearing package ("Application") and evidence by way of registered mail on May 25, 2017. The registered mail 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.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of their security deposit pursuant to section 38 of the *Act*?

Background and Evidence

The tenant's agent testified that this fixed-term tenancy began on May 1, 2016, and the tenant moved out at the end of the tenancy on April 30, 2017. Monthly rent was set at \$2,000.00, payable on the first of each month. The landlord had collected a security deposit in the amount of \$1,000.00 at the beginning of the tenancy, and continues to hold this deposit.

The tenant provided a forwarding address to the landlord's agent on May 6, 2017, but the landlord has not returned any portion of the tenant's security deposit, nor has the tenant given authorization to the landlord to retain any portion of the security deposit.

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's agent 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 a monetary order amounting to double the original security deposit.

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 security deposit retained by the landlord, plus a monetary award equivalent to the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*:

| Item | Amount |
|--|-------------------|
| Return of Security Deposit | \$1,000.00 |
| Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i> | 1,000.00 |
| Total Monetary Order | \$2,000.00 |

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.

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 18, 2017

Residential Tenancy Branch