



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with the tenants' 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; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

While the tenant MM 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 their application for dispute resolution hearing package ("Application") and evidence on May 2, 2017 by registered mail. The tenant provided the tracking number in the hearing. 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 May 7, 2017, five days after mailing.

Issues(s) to be Decided

Are the tenants entitled to the return of their security deposit pursuant to section 38 of the *Act*?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant MM provided the following sworn, undisputed testimony as the landlord did not attend the hearing. This month-to-month tenancy began on October 1, 2016, and

ended on December 15, 2016 when the tenants had moved out. Monthly rent was set at \$800.00. The landlord had collected a security deposit of \$400.00 from the tenants, and still continues to hold that deposit. The tenants provided their forwarding address to the landlord in writing on April 16, 2017, along with a request for the return of the deposit. A copy of this letter was submitted in the tenants' evidence.

The tenant testified that they had not received any portion of their security deposit from the landlord. The tenant testified that they did not give permission for the landlord to retain any portion of their 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 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 this case, I find that the landlord has not returned the tenants' security deposit within 15 days of the provision of their forwarding address on April 6, 2017. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenants' security deposit. The tenant MM gave undisputed sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain any of the security deposit.

In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the original security deposit

As the tenants were successful in their application, I find that the tenants are also entitled to recover the filing fee from the landlord.

Conclusion

I issue a Monetary Order in the tenants' favour under the following terms which allows the tenants to recover the original security deposit, plus a monetary award equivalent to the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*. I find the tenants are also entitled to \$100.00 for recovery of the filing fee for this application.

Item	Amount
Return of Security Deposit	\$400.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	400.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$900.00

The tenant(s) are 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.

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 27, 2017

Residential Tenancy Branch