



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD FF

Introduction

This hearing was scheduled to hear the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a return of the security deposit pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Only the tenant and articulated student H.D. attended the hearing. H.D. stated that she had been retained by the tenant to assist her with this tenancy matter. Both the tenant and H.D. were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

H.D. explained that an Application for Dispute Resolution and evidentiary package were sent by way of Canada Post XpressPost to the landlord on August 9, 2017. The Canada Post Tracking number was provided to the hearing as part of the tenant's evidentiary package. Pursuant to sections 88 and 89 of the *Act* the landlord found to have been served with these documents on August 14, 2017 in accordance with the sections 88, 89 & 90 of the *Act*.

While not a recognized form of service under the *Act*, an examination of the Canada Post website explains that documents sent to the United States in this manner require a signature upon their delivery and they are trackable. Since the landlord lives in the United States, I find that the tenant has made a reasonable effort to serve the landlord in an appropriate manner. Pursuant to section 64(3)(a) of the *Act*, I allow the tenant's service of the application for dispute resolution by way of Canada Post XpressPost.

Issue(s) to be Decided

Is the tenant entitled to a return of the security deposit? If so, should it be doubled?

Is the tenant entitled to a return of the filing fee

Background and Evidence

The tenant explained that this tenancy began on September 1, 2016 and ended on April 31, 2017. She stated that this was a fixed-term tenancy. Rent was \$850.00 per month, and a security deposit of \$850.00 collected by the landlord at the outset of the tenancy continues to be held by the landlord.

The tenant said that prior to her move out she sent a text on April 29, 2017 with her forwarding address to the landlord. She said that she had sent this to the landlord so that she could have her security deposit returned. In addition to this text message, the tenant sent a copy of the forwarding address to the landlord by way of Canada Post Xpress Post on May 24, 2017. A copy of the Canada Post Tracking number and the letter containing her forwarding address were provided to the hearing as part of the tenant's evidentiary package.

Analysis

Section 19 of the *Act* states:

A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement...If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection, the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

In this case, the tenant the landlord collected a security deposit that was equivalent to one month's rent. This is in excess of the amount stipulated by section 19 of the *Act* and an overpayment of \$425.00. The landlord is therefore directed to return \$425.00 of the security deposit to the tenant.

Section 38 of the *Act* requires the landlord to either return a tenant's security or pet deposit in full or file for dispute resolution for authorization to retain these deposits 15 days after the *later* of the end of a tenancy, or upon receipt of a tenant's forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. In this case, the value of the security deposit is \$425.00. However, this provision does not apply if the landlord has obtained a tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). Under section 38(3)(b) a landlord may retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

No evidence was produced at the hearing that the landlord applied for dispute resolution within 15 days of being sent a copy of the tenant's forwarding address by Canada Post Xpresspost, or following the conclusion of the tenancy. If the landlord had concerns arising from the damages that arose as a result of this tenancy, the landlord should have applied for dispute resolution to retain the security deposit.

Pursuant to section 38(6)(b) of the *Act*, a landlord is required to pay a monetary award equivalent to double the value of the security deposit if a landlord does not comply with the provisions of section 38 of the *Act*. The tenant is therefore entitled to a monetary award in the amount of \$1,275.00, representing a doubling of the tenant's security deposit that has not been returned.

As the tenant was successful in her application, she may recover the \$100.00 filing fee associated with this application.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1,375.00 against the landlord. The tenant is provided with a Monetary Order in the above terms and the landlord must be served with 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.

Item	<u>Amount</u>
Return of Security Deposit (2 x \$425.00)	\$850.00
Return of overpayment	425.00
Recovery of Filing Fee	100.00
Total =	\$1,375.00

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: October 24, 2017

Residential Tenancy Branch