



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

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

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The tenants attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence. The tenants provided affirmed testimony that the landlord was served with the notice of hearing package via Canada Post Registered Mail on May 25, 2017. I accept the undisputed affirmed testimony of the landlord and find that the landlord was properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of double the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenants provided undisputed affirmed testimony that this tenancy began on September 1, 2014 on a month-to-month basis as per a signed tenancy agreement. The monthly rent was \$2,300.00 payable on the 1st day of each month. A security deposit of \$1,150.00 was paid on September 1, 2014.

The tenants provided undisputed evidence that the tenancy ended on April 30, 2017 after a notice to end tenancy was given to the landlord on March, 28, 2017. In this same notice the landlord was provided with the tenants forwarding address in writing for the return of the \$1,150.00 security deposit.

The tenants seek a monetary claim of \$2,400.00 which consists of:

\$1,150.00	Return of Original Security Deposit
\$1,150.00	Compensation, Failure to Comply with Sec. 38
\$100.00	Recovery of Filing Fee

The tenant stated that as of the date of this hearing the landlord has failed to return the \$1,150.00 security deposit, nor has the landlord served the tenants with an application to dispute it return.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security and/or pet damage deposit(s).

In this case, I accept the undisputed evidence of the tenants and find that the landlord was provided with the tenants' forwarding address in writing on March 28, 2017 and that the tenancy ended on April 30, 2017. I also find based upon the undisputed evidence of the tenants that the landlord has failed to return the original \$1,150.00 security deposit nor has the landlord made an application to dispute its return. As such, I find that the tenants are entitled to return of the original \$1,150.00 security deposit. I also find that as the landlord has failed to comply with section 38 (1) of the Act that the landlord is required to pay the tenants a monetary award of \$1,150.00 which is the equivalent value of the \$1,150.00 security deposit.

The tenants having been successful are entitled to recovery of the \$100.00 filing fee.

Conclusion

I issue a monetary order in the tenants' favour under the following terms which allows the tenants to recover their original security deposit 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	\$1,150.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the Act	1,150.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$2,400.00

The tenants are 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 orders 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: November 03, 2017

Residential Tenancy Branch