



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

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 the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The landlords did not attend this hearing which lasted 10 minutes. The tenant attended and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that the application for dispute resolution dated May 30, 2017 and all evidentiary materials were served on the landlords by registered mail sent on that date. The tenant submitted two CanadaPost tracking numbers as evidence in support of service. Pursuant to sections 88, 89 and 90 of the *Act*, I find that the tenant's application package was deemed served on the landlords on June 4, 2017, five days after mailing.

The landlord submitted late evidence to the Residential Tenancy Branch on November 7, 2017. Included in the written evidence submitted to the branch by the landlord FS is a letter where the landlord confirms she was served with the tenant's application. In the letter included in the written evidence the landlord states that she will not participate in the conference call saying that "I'm too unwell for that." No additional information or documentation about the landlord's health is submitted. The landlord does not request an adjournment in the written submissions. Rules of Procedure 7.3 provides that; "if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of the party". Accordingly the hearing was conducted without the landlord.

Issue(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee of this application from the landlords?

Background and Evidence

The tenant gave undisputed evidence regarding the following facts. This periodic tenancy began in November, 2016 and ended on April 30, 2016. A security deposit of \$350.00 was paid by the tenant at the start of the tenancy and is still held by the landlords. No condition inspection report was prepared at either the start or the end of the tenancy. The tenant emailed her forwarding address to the landlord on May 7, 2017. The tenant has not provided written authorization that the landlord may retain any portion of the \$350.00 security deposit.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the undisputed evidence of the tenant that the landlords were given written notice of a forwarding address on May 7, 2017. I accept the undisputed evidence of the tenant that the landlords did not return the security deposit, did not make an application for authorization to retain the security deposit nor did they have written authorization from the tenant that they may retain any portion of the security deposit.

In addition, the tenant testified that no condition inspection report was prepared at the start of the tenancy. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

...

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Accordingly, I also find that the landlords have extinguished any right to claim against the security deposit by failing to prepare a condition inspection report at the start of the tenancy.

Based on the undisputed evidence before me, I find that the landlords have not filed an application to retain the security deposit within the 15 day time limit and have failed to return the tenant's security deposit in full. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlords' failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a \$700.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

As the tenant's application was successful I also find that they are entitled to recover the \$100.00 filing fee for this application.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$800.00 against the landlords. The tenant is provided with a Monetary Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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: November 14, 2017

Residential Tenancy Branch