



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF OLC

Introduction

This hearing was convened in response to applications by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- a return of the security deposit pursuant to section 38 of the *Act*;
- an Order directing the landlords to comply with the *Act* pursuant to section 62; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the tenant and landlord, A.M., appeared at the hearing. Both parties were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The landlord confirmed receipt of the tenant’s application for dispute resolution by way of Canada Post Registered Mail on June 30, 2017. Pursuant to section 89 of the *Act* the landlord is found to have been duly served with the tenant’s application.

Issue(s) to be Decided

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

Can the tenant recover the filing fee from the landlord?

Should the landlord be directed to comply with the *Act*?

Background and Evidence

The tenant explained to the hearing that this tenancy began on March 15, 2014 and ended on January 31, 2017. Rent was \$1,450.00 per month, and a security deposit of

\$725.00, along with a key deposit of \$100.00 were collected by the landlords at the outset of the tenancy.

On February 22, 2017, the landlords returned \$476.66 to the tenant by way of cheque.

At the hearing, the tenant said that no condition inspection was performed by the parties and that the landlord never scheduled at time for the parties to meet. The tenant said that she agreed to allow the landlord to deduct \$30.00 from her security deposit because of cleaning that was required in the rental unit. The landlord acknowledged retaining \$248.34 from the tenant's security deposit because of damage and cleaning that were required in the rental unit. The tenant argued that she did not agree to this deduction. The landlord stated that he had not applied to retain this amount and did not have an order from an arbitrator permitting him to do so.

In addition to a return of her security deposit, the tenant has applied for a return of the \$100.00 key deposit which was collected by the landlord at the outset of the tenancy. During the hearing the tenant stated that at the outset of the tenancy she received 1 mail box key, 2 fobs and 1 key to the rental unit. The tenant continued by saying that on either January 31, 2017 or February 1, 2017 she returned all of these keys to the landlord's wife. The landlord argued that he received only 1 fob and was compelled to replace the missing fob.

Undisputed testimony presented at the hearing by the tenant established that the landlord received the tenant's address on two occasions; the first occasion being on February 2, 2017 when she emailed the landlord with her forwarding address. The tenant said that on February 17, 2017 the landlord sent her a text message asking for her forwarding address. The tenant stated that following receipt of this text, on February 17, 2017, she once again emailed the landlord with her forwarding address. On February 22, 2017 a cheque for \$476.66 was received at her forwarding address.

Analysis

Section 38 of the *Act* requires the landlord to either return a 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 and, or upon receipt of the 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. However, this provision does not apply if the landlord has obtained the 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). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

While the tenant sent her forwarding address to the landlord by email, which is not in strict compliance with the requirement of section 38 of the *Act* which states that a tenant must provide the landlord with their forwarding address in writing, I find, pursuant to section 71(2) and based on the testimony presented at the hearing, that the landlord was sufficiently aware of the tenant's proper forwarding address on February 17, 2017 because the notice did in fact reach the landlord who responded by sending the tenant \$476.66.

Pursuant to section 71(2) of the *Act*, the landlords are deemed to have been served with the tenant's forwarding address on February 17, 2017.

No evidence was produced at the hearing that the landlord applied for dispute resolution within 15 days of receiving a copy of the tenant's forwarding address, 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. It is inconsequential if damages were present in the rental unit, if the landlord does not take action to address these matters through the dispute resolution process. A landlord cannot decide to simply keep the security deposit as recourse for loss.

While the landlord acknowledged that he withheld \$248.34 from security deposit because of the costs associated with damage and cleaning to the rental unit, no evidence was produced at the hearing that the landlord received the tenant's written authorization to retain a portion of the security deposit to offset damages or loss. Testimony at the hearing from the tenant explained that the tenant granted the landlord permission to retain \$30.00 from her 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 an amount representing a doubling of the tenant's security deposit that has not

been returned, less the \$476.66 already returned.

In addition to a return of the security deposit, the tenant said has applied for a return of \$100.00 related to her fob deposit which was not returned.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove her entitlement to a monetary award.

I find based on the tenant's oral testimony that the landlord retained her \$100.00 key deposit without her consent. At the hearing, the parties presented conflicting testimony regarding the items which were returned but the landlord acknowledged retaining the tenant's \$100.00 deposit. I find that the tenant has suffered a loss as a result of the tenancy and that it stemmed directly from an action of the landlord. If the landlord had concerns about the loss of a fob, he should have applied to the tenancy branch to retain the tenant's key deposit.

As the tenant was successful in her application, she may recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a Monetary Order of \$1,173.34 in favour of the tenant as follows:

Item	Amount
Return of Security Deposit under section 38 (2 x 725.00)	\$1,450.00
Less Amount of Security Deposit Returned	(-476.66)
Return of Key Deposit	100.00

Return of filing fee	100.00
Total =	\$1,173.34

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.

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 29, 2017

Residential Tenancy Branch