



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC 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*;
- a monetary award for money owed under the tenancy agreement pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Only tenant T.Z. appeared at the hearing. The tenant was given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The tenant explained that an Application for Dispute Resolution and evidentiary package were sent by way of Canada Post Registered Mail to the landlord on June 21, 2017. A copy of the Canada Post Receipt and Tracking number were provided to the hearing as part of the tenant's application. Pursuant to sections 88, 89 & 90 of the *Act*, I find that the landlord was duly served with the tenant's application for dispute resolution and evidentiary package, five days after it's posting on June 26, 2017.

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 monetary award for further damages?

Can the tenant recover the filing fee?

Background and Evidence

The tenant gave undisputed testimony that this tenancy began on December 18, 2013 and ended on October 22, 2016. Rent was \$1,500.00 per month, and a security deposit of \$750.00 paid at the outset of the tenancy continues to be held by the landlord.

The tenant explained that he was seeking a Monetary Award of \$1,700.00. This amount was reflection of a doubling of the security deposit under section 38 of the *Act*, because the landlord continued to hold his security deposit. Additionally, he explained that he was seeking a return of the filing fee associated with the application for dispute, and compensation of \$200.00 for a move in/out fee that he paid to the landlord but which the landlord failed to pay to the building manager.

The landlord did not attend the hearing and provided no evidence or written submissions to the hearing.

The tenant stated that he had sent the landlord his forwarding address in writing on December 20, 2017 by Canada Post Registered Mail. A copy of the Canada Post receipt and tracking number were provided to the hearing as part of the tenant's evidentiary package.

During the hearing the tenant said that he did not provide the landlord with written permission to retain any part of his security deposit and that the landlord did not arrange for a condition inspection to occur following the end of the tenancy. The tenant continued by stating that no condition inspection was performed at the start or at the end of the tenancy.

Analysis

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 \$750.00. 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 Registered Mail on December 20, 2016, or following the conclusion of the tenancy on October 22, 2016. Section 88 & 90 of the *Act* provides that the forwarding address sent to the landlord by Registered Mail deemed the landlord in receipt of this address on December 25, 2017.

Under 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 \$1,500.00, representing a doubling of the tenant's security deposit that has not been returned.

The tenant has also applied for a monetary award of \$200.00 representing a move in/out fee that he paid to the landlord, but which the landlord failed to pay the building manger. A tenant is entitled to a monetary order under section 67 of the *Act*.

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 their entitlement to a monetary award.

Section 16 of the *Residential Tenancy Policy Guideline* examines the issues of compensation in further detail. It notes:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Based on the tenant's undisputed testimony and evidentiary package, I find that the tenant has suffered a loss as a result of the landlord's non-compliance with the terms of their tenancy agreement. The landlord had a duty to forward all money paid to him

related to a move in/out fee to the building's strata. The tenant provided undisputed testimony that this did not occur. I found the tenant to be a credible witness who could accurately provide detailed descriptions of the events that occurred. For these reasons, I find that the tenant is entitled to a return of the \$200.00 move in/out fee.

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

Conclusion

I issue a Monetary Order of \$1,800.00 in favour of the tenant as follows:

Item	Amount
Return of Security Deposit (2 x \$750.00)	\$1,500.00
Return of Move In/Out fee	200.00
Return of Filing Fee	100.00
Total =	\$1,800.00

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 30, 2017

Residential Tenancy Branch