



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

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 their security deposit pursuant to section 38.

RG ('landlord') appeared on behalf of the landlord in this hearing, and was given full authority to do so. GS testified on behalf of the tenant in this hearing, and had full authority to do so. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and evidence. The landlord did not submit written evidence for this hearing.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of their security deposit pursuant to section 38 of the *Act*?

Background and Evidence

This fixed term tenancy began on January 1, 2017, with monthly rent set at \$775.00. The landlord collected a security deposit in the amount of \$388.00 at the beginning of the tenancy. Both parties confirmed in the hearing that the tenant moved out on May 31, 2017, and the security deposit was returned in full to the tenant on October 21, 2017.

The tenant is applying for compensation for the landlord's failure to return the security deposit to her within 15 days of the provision of her forwarding address. The landlord did not dispute that the tenant had provided her forwarding address in writing at the time of the move-out inspection, which took place on the same day the tenant moved out.

The landlord testified that that they had attempted to return the deposit to the forwarding address, but the cheque was returned. The tenant disputes that she had ever received a cheque at the forwarding address, stating that it was, and still was a valid forwarding address. The landlord could not confirm when the cheque was mailed out to the tenant, but testified that the tenant was eventually returned the security deposit in person.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, the landlord confirmed in the hearing that the tenant had provided her forwarding address on May 31, 2017, but the landlord was unable to confirm when the tenant's security deposit was mailed to her. Both parties confirmed that the security deposit was eventually returned to her in full on October 21, 2017, almost 5 months later. I find that the landlord had not returned the tenant's security deposit in full within 15 days of receipt of the tenant's forwarding address in writing. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The landlord had not obtained the tenant's written authorization at the end of the tenancy to retain any portion of the tenant's security deposit.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the original security deposit less the amount returned to her.

Conclusion

I issue a Monetary Order in the amount of \$388.00, in the tenant's favour, which allows the tenant a monetary award for the landlord's failure to comply with the provisions of section 38 of the *Act*:

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of 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: January 22, 2018

Residential Tenancy Branch