



Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD 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*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Only the tenant 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 her Application for Dispute Resolution and evidentiary package were sent by way of Canada Post Registered Mail to the landlord on July 7, 2017. A copy of the Canada Post receipt and tracking number were provided to the hearing as part of the tenant's application for dispute. At the hearing, the tenant informed that the Application for Dispute had been returned to her as 'Undeliverable'. When asked about the address to which she sent the packages, the tenant said that she sent her application for dispute and evidentiary package to the return address listed on the envelope which contained a partial return of her security deposit. Furthermore, she explained she was informed by the landlord to use the address to which she sent the application for dispute, as an address for service. Pursuant to section 72(2)(c), I find that the landlord was duly served with the tenant's forwarding address via Canada Post Registered Mail

Issue(s) to be Decided

Is the tenant entitled to a monetary award?
Can the tenant recover the filing fee?

Background and Evidence

The tenant explained that this tenancy began on September 5, 2015 and ended on August 21, 2016. Rent was \$2,200.00 per month, and a security deposit of \$1,300.00 was paid at the outset of the tenancy. On October 21, 2016, the landlord sent the tenant

a cheque for \$650.00 for what the tenant believed was in full satisfaction of her security deposit.

The tenant stated she performed a condition inspection of the rental unit with the landlord on September 1, 2016. She said that during this inspection, she agreed only to a \$60.00 deduction in her security deposit due to a broken closet door.

The tenant said that on September 4, 2016 she sent the landlord a copy of her forwarding address via text message. She explained that she is confident the landlord received this address because it is the address to which the landlord sent a partial return of her security deposit.

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 \$1,300.00. 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 text message on September 4, 2016, or following the conclusion of the tenancy. While not a recognized form of service under the *Act*, I find that the landlord received this forwarding address as is evidenced by the return of \$650.00 to the tenant on October 21, 2016. Pursuant to section 72(2)(c), I find that the landlord was duly served with the tenant's forwarding address via text message.

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 \$1,890.00, representing a doubling of the security deposit that has not been returned, less the \$650.00 already returned, and less the \$60.00 that the tenant agreed to allow the landlord to retain for the replacement of a broken door.

During the hearing, the tenant testified that she did not cash the cheque for \$650.00 which was sent to her by the landlord. I can make no orders related to this cheque, as the landlord had partially fulfilled their obligation related to the return of the security deposit and it was the tenant's decision not to cash this cheque.

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 \$1,990.00 in favour of the tenant as follows:

Item	Amount
Return of Security Deposit (2 x \$1,300.00)	\$2,600.00
Return of Filing Fee	100.00
Less Amount returned	(-650.00)
Less agreed deduction	(-60.00)
Total =	\$1,990.00

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: January 9, 2018

Residential Tenancy Branch