



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.

DH ("landlord") testified on behalf of the landlord in this hearing, and was given 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'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

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*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This month-to-month tenancy began in June of 2016, and ended on June 27, 2017. Monthly rent was set at \$650.00, payable on the first of each month. The landlord had collected a security deposit in the amount of \$347.50 and 2 pet damage deposits in the amount of \$347.50 each at the beginning of the tenancy. The landlord returned \$268.25 to the tenant at the end of the tenancy, and is still in possession of the remaining portion

of the deposits. Both parties confirmed that the tenant provided a forwarding address on date the tenant moved out, June 27, 2017.

The landlord did not dispute the fact that they kept a portion of the tenant's deposits, stating that the tenant failed to properly clean the carpet upon move-out, and that by initialing the inspection report that the tenant had consented to the landlord keeping a portion of the deposits.

The tenant testified she did not give written authorization to allow the landlord to retain any portion of the security deposit or the pet damage deposits.

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, I find that the landlord had not returned the tenant's security deposit and pet damage deposits 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. Although the landlord interpreted the tenant's initial on the inspection report to indicate consent, I find that 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 or pet damage deposits.

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 and pet damage deposits, less the amount already returned to the tenant.

Conclusion

I issue a Monetary Order on the amount of **\$1,816.75**, in the tenant's favour, under the following terms which allows the tenant to recover the portion of the security deposit and pet damage deposits retained by the landlord, plus a monetary award equivalent to the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*:

Item	Amount
Return of Security Deposit and Pet Damage Deposits Still Held by Landlord	\$774.25
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	1,042.50
Total Monetary Order	\$1,816.75

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: February 9, 2018

Residential Tenancy Branch