



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNSD

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

This hearing dealt with an application by the tenant for a monetary order for return of double the security deposit paid to the landlord and for the return of the filing fee for the Application, under the Residential Tenancy Act (the "Act").

The tenant testified and supplied documentary evidence that she served the landlord with the Notice of Hearing and Application for Dispute Resolution and her documentary evidence by registered mail, sent on August 24, 2017. The tenant had provided tracking information from Canada Post indicating the mail had been signed for on August 25, 2017. I find the landlord has been duly served in accordance with section 89 of the Act. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Both parties participated in the original hearing date of February 26, 2018, however, due to some technical difficulties the hearing was unable to be conducted. The Branch contacted each party and arranged to have the matter heard on this date. The Branch provided a new Notice of Hearing letter that reflects the date, time and passcode for this hearing. I proceeded and completed the hearing on that basis. Only the tenant appeared at the hearing today. The tenant provided affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

Issue to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to an order to compel the landlord to comply with the Act, regulation or tenancy agreement?

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

Background, Evidence

The tenant's undisputed testimony is as follows. The tenancy began on August 1, 2016 and ended on July 31, 2017. The tenants were obligated to pay \$1375.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$687.50.00 security deposit. The tenant testified that a written condition inspection report was conducted at move in and move out. The tenant testified that she provided her forwarding address on June 30, 2017. The tenant is seeking the return of double her deposit $\$687.50 \times 2 = \1300.00 . The tenant is also seeking the recovery of the \$100.00 filing fee.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant said he is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The tenant testified that she left the forwarding address in the landlord's mailbox but couldn't be sure as to whether he received it or not. The tenant has not provided sufficient proof that the landlord was served with her forwarding address to "trigger" the doubling provision as outlined above. Based on the above, I find that the tenant has not provided sufficient evidence to be granted the return of double the deposit, but is entitled to the original amount of \$687.50.

The tenant is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The tenant has established a claim for \$787.50. I grant the tenant an order under section 67 for the balance due of \$687.50. This order may be filed in the Small Claims 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: March 5, 2018

Residential Tenancy Branch