



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

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

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

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

The tenant, in her application, had filed for a monetary order in the amount of \$1,997.10 for money owed to her by the landlord, but indicated in the hearing that the landlord had issued her a cheque for this amount. Accordingly this monetary portion of the tenant's application was withdrawn.

Preliminary Issue: Service of Landlord's Evidence

Although the landlord submitted evidence to the Residential Tenancy Branch for this hearing, the landlord admitted in the hearing that the tenant was not served with the landlord's evidence.

Rule 3.15 of the RTB's Rules of Procedure establishes that "the respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the

applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing".

The purpose of serving documents is to notify the parties and allow an opportunity for those parties to prepare for the dispute resolution hearing. Failure to serve documents in a way recognized by the Legislation may result in a hearing being adjourned or dismissed, or in the exclusion of those evidentiary materials for the hearing.

I find the tenant was not served with the landlord's evidence. Since I find that the tenant was not properly served with the landlord's evidence, the landlord's evidence will be excluded for the purposes of this hearing and application.

Issues(s) to be Decided

Is the tenant entitled to monetary compensation for money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to a monetary award for the return of their security deposit?

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

Background and Evidence

This month-to-month tenancy began on March 1, 2014. Monthly rent was set at \$1,997.10, payable on the first of the month. The landlord had collected a security deposit in the amount of \$900.00 at the beginning of the tenancy. The tenant testified that she has moved out on June 30, 2017, while the landlord testified that the tenant had moved out on July 1, 2017.

Both parties confirmed in the hearing that the tenant had provided her forwarding address on June 15, 2017. The tenant filed this application for dispute resolution on August 16, 2017 as the landlord failed to return her \$900.00 security deposit within 15 days of her moving out. The landlord did not dispute that he failed to return the tenant's deposit until August 21, 2017, after the tenant had filed her application, as the landlord had lost the tenant's forwarding address.

Although the tenant did receive her deposit back in full, the tenant is applying for compensation equivalent to the deposit was the landlord did not comply with section 38 of the *Act*.

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 in full within 15 days of July 1, 2017, the move-out date provided by the landlord in this hearing. 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 tenant gave sworn testimony that the landlord had not obtained her 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 compensation equivalent to the deposit (\$900.00) for the landlord's failure to comply with the *Act*.

As the tenant has been successful in his application, I find that the tenant is also entitled to recover the filing fee from the landlord.

Conclusion

I issue a \$1,000.00 Monetary Order in the tenant's favour under the following terms which allows the tenant a monetary award equivalent to the value of the deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*. The tenant is also entitled to recover the cost of the filing fee for this application.

Item	Amount
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	\$900.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$1,000.00

The tenant is provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlord(s) 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: March 1, 2018

Residential Tenancy Branch