



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was scheduled to hear the tenants' 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, R.C. attended the hearing. The tenant was given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

R.C. provided undisputed testimony that he sent the landlord a copy of his application for dispute resolution and evidentiary package by way of Canada Post Registered Mail. Pursuant to sections 88, 89 & 90 of the *Act* the landlord deemed to have been served with these documents in accordance with the sections 88, 89 & 90 of the *Act*.

Issue(s) to be Decided

Can the tenants recover the filing fee?

Can the tenants recover their security deposit? If so, should it be doubled?

Background and Evidence

The tenant explained that this tenancy began on May 30, 2016 and ended in September 2016. He stated that no condition inspection report was performed by the landlord at the conclusion of the tenancy, and he said the landlord refused to meet with him following the tenants' departure from the rental unit. The tenants eventually provided their friend

with the key, who returned it to the landlord. The landlord did not provide any contact information through which the tenants were able to provide him with their forwarding address, and the tenant explained that they eventually provided the landlord with their forwarding address by way of Canada Post Registered Mail. A copy of this letter was provided in the tenants' evidentiary package.

On April 28, 2017 the landlord returned \$100.00 to the tenants; however, refused to return the remaining \$500.00.

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 \$600.00. 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 tenants' forwarding address by Canada Post Registered Mail, or following the conclusion of the tenancy. If the landlord had concerns arising from the damages that arose as a result of this tenancy, the landlord should have applied for dispute resolution to retain the security deposit.

Pursuant to 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*.

Residential Tenancy Policy Guideline #17 states, "in determining the amount of the deposit that will be doubled...the arbitrator doubles the amount paid as a security deposit, then deducts the amount already returned to the tenant to determine the amount of the monetary order."

The tenants are therefore entitled to a monetary award in the amount of \$1,100.00, representing a doubling of their security deposit (2 x \$600.00), less the \$100.00 that has

been returned.

As the tenants were successful in their application, they may recover the \$100.00 filing fee associated with this application, pursuant to section 72.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$1,100.00 against the landlord. The tenants are provided with a Monetary Order in the above terms and the landlord must be served with 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.

Item	<u>Amount</u>
Return of Security Deposit (2 x \$600.00)	\$1,200.00
Less payment	(-100.00)
Recovery of Filing Fee	100.00
Total =	\$1,200.00

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 28, 2018

Residential Tenancy Branch