



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT

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 her security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

While the tenant attended the hearing by way of conference call, the landlords did not. I waited until 2:10 p.m. to enable the landlords to participate in this scheduled hearing for 2:00 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant provided sworn, undisputed testimony that she had served the landlords with her application for dispute resolution hearing package ("Application") and evidence on November 10, 2017 by way of registered mail. The tenant provided the tracking numbers in the hearing. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlords were deemed served with the Application and evidence on November 15, 2017, five days after mailing.

Issues(s) to be Decided

Is the tenant entitled to the return of her security deposit pursuant to section 38 of the *Act*?

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

Background and Evidence

The tenant provided the following sworn, undisputed testimony as the landlords did not attend the hearing. This month-to-month tenancy began on August 1, 2014, and ended

on September 30, 2017 when the tenant had moved out. Monthly rent was set at \$2,100.00.

The landlords had collected a security deposit of \$995.00 from the tenant. The tenant provided her forwarding address to the landlords in writing on October 18, 2017 by way of registered mail. The tenant provided the registered mail tracking number to support her testimony. The tenant testified that it was not until at the end of November 2017, after she had filed her application for dispute resolution, when the landlord attempted to send her a cheque for a partial refund of her security deposit. The tenant rejected this refund as she did not give permission for the landlords to retain any portion of her deposit.

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 tenant 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 landlords had not returned the tenant's security deposit within 15 days of the provision of her forwarding address. I find that the tenant provided sufficient evidence to support the provision of her forwarding address on October 18, 2017. There is no record that the landlords have applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The tenant gave undisputed sworn testimony that the landlords had not obtained her written authorization at the end of the tenancy to retain any portion of the security deposit.

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

As the tenant was successful in her application, I find that the tenant is also entitled to recover the filing fee from the landlords.

Conclusion

I issue a Monetary Order in the tenant's favour under the following terms which allows the tenant to recover the original security deposit, plus a monetary award equivalent to the value of her security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*. I find the tenant is also entitled to \$100.00 for recovery of the filing fee for this application.

Item	Amount
Return of Security Deposit	\$995.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	995.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$2,090.00

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: June 12, 2018

Residential Tenancy Branch