



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened in response to an application from the tenant pursuant to the *Residential Tenancy Act* (“*Act*”) for:

- authorization to obtain a return of double the amount of the security or pet 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 appeared at the hearing. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that the Notice of Hearing and the Application for Dispute Resolution packages were served on the landlords on December 20, 2017, via registered mail. The tenant was able to locate the two registered mail receipts and provided the two numbers referred to on the cover page of this decision. Pursuant to sections 89 & 90 of the *Act*, I find that the landlords were deemed served with the Notice of Hearing and the Application for Dispute Resolution packages, on December 25, 2017, five days after these were sent to them via registered mail.

Issue(s) to be Decided

Is the tenant entitled to:

- a Monetary Order for the return of double the amount of the security or pet deposit, pursuant to section 38 of the *Act*, and
- an order for the return of his filing fee pursuant to section 72 of the *Act*.

Background and Evidence

While I have turned my mind to all the documentary evidence, including any and all reports, photographs, diagrams, miscellaneous documents, letters, e-mails, and also the testimony of the parties, not all details of the evidence or the parties' respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings around each are set out below.

The tenant provided undisputed testimony that the tenancy in question began on May 1, 2017, and ended on October 31, 2017. This was a month to month tenancy. Rent was \$1,200.00 per month, and security and pet deposits of \$600.00 each were collected at the outset of the tenancy.

The tenant's evidentiary package included a copy of receipt signed by the tenant and the landlord DM on April 22, 2017, confirming that the tenant paid the two deposits totaling \$1,200.00 that day.

The tenant also filed a date stamped photo showing his name and forwarding address taped to the landlord's door on November 22, 2017.

The tenant confirmed in his evidence that he did not give the landlords permission to withhold any part of his security or pet deposit following conclusion of the tenancy nor did he agree to surrender any amount of either deposit for damage or repairs required in the rental unit.

The tenant is seeking \$2,400.00 in satisfaction for a doubling of the two deposits, along with a return of the filing fee of \$100.00.

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 the deposit 15 days

after the *later* of the end of a tenancy and, or upon receipt of the 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 or pet deposit.

No evidence was produced at the hearing that the landlords applied for dispute resolution within 15 days of receiving a copy of the tenant's forwarding address on November 22, 2017.

However, section 38 does not apply if a landlord has obtained the 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). A landlord may also under section 38(3)(b), 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 landlords had obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

No evidence was produced at the hearing that the landlords had obtained an order under section 38(3)(b), retain the tenant's security deposit.

No evidence was produced at the hearing that the landlords had complied with section 35 (2) of the *Act* by offering the tenant two opportunities for a move-out inspection.

If the landlords had concerns arising from the damages that arose because of this tenancy, the landlords should have applied for dispute resolution to retain the security deposit within the time as prescribed by the *Act*.

Pursuant to section 38 of the *Act*, I find that the tenant is entitled to a monetary award of \$2,400.00 representing double the amounts of the security and pet deposits that were not returned to him. As the tenant was successful in his application, he may recover the \$100.00 filing fee associated with this application.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$2,500.00 against the landlords. The tenant is provided with a Monetary Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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 22, 2018

Residential Tenancy Branch