



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRIDGEMAN CONSTRUCTION LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, MNSD

Introduction

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;; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord acknowledged receipt of evidence submitted by the tenant. The landlord did not submit any documentation for this hearing. The landlord testified that they did not receive the hearing package until several days ago. The tenant testified that she sent the package by registered mail on November 30, 2017 to the address on her signed tenancy agreement from 2013. The landlord testified that she moved in 2014 but did not provide a new service address. Based on the above, I find that the tenant did what she could do, and what she believed to be the landlords' address and served them the Notice of Hearing documents 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.

Issue to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of her security deposit and pet 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 recover the filing fee for this application from the landlord?

Background, Evidence

The tenant's testimony is as follows. The tenancy began on June 1, 2013 and ended on January 31, 2017. The tenant was obligated to pay \$2500.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$1250.00 security deposit and a \$1250.00 pet deposit. The tenant testified that she provided her forwarding address in writing to the landlord by registered mail on March 30, 2017 and also by e-mail. The tenant is seeking the return of double her deposits $\$1250.00 + \$1250.00 \times 2 + \$5000.00$. The tenant is also seeking the recovery of the \$100.00 filing fee.

The landlord gave the following testimony. The landlord testified that the tenant was responsible for the utilities in this suite and that they remain unpaid. The landlord testified that was the reason why the deposit wasn't returned.

Analysis

The landlord made reference to costs they incurred as a result of the tenant. It was explained in great detail that this decision will only address the application before me on this date and that both parties are at liberty to make their own separate application if there are other unresolved issues between them. Both parties advised that they understood. 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 she is applying for the return of double the security and pet 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 landlord acknowledged that the tenant did not give the landlord written permission to retain any amount from her security deposit or pet deposit. The landlord also acknowledged that they did not return the full security deposit or pet deposit to the tenant or make an application for dispute resolution to claim against this deposit, within 15 days of the end of this tenancy. Based on the above and the documentary evidence before me, I find that the landlord has not acted in accordance with Section 38 of the Act and that the tenant is entitled to the return of double her deposits in the amount of \$5000.00

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

Conclusion

The tenant has established a claim for \$5000.00. I grant the tenant an order under section 67 for the balance due of \$5000.00. 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: June 14, 2018

Residential Tenancy Branch