



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

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

- authorization to obtain a return of the security or pet deposit, pursuant to section 38 of the *Act*;
- a return of the filing fee pursuant to section 72 of the *Act*.

Only tenant R.D. (the “tenant”) and her witness, E.V. 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 explained that the application for dispute was placed in the landlord’s mailbox on November 30, 2017. Pursuant to sections 89 & 90 of the *Act*, I deem the landlord served with the Notice of Hearing, on December 3, 2017, three days after this document was placed in the landlord’s mailbox.

Issue(s) to be Decided

Are the tenants entitled to a return of their security deposit? If so, should it be doubled?

Can the tenants recover the filing fee?

Background and Evidence

Undisputed testimony provided to the hearing by the tenant explained that this tenancy began on July 15, 2017 and ended on September 30, 2017. Rent was \$1,350.00 per month, and a security deposit of \$675.00 paid at the outset of the tenancy continues to be held by the landlord.

The tenant is seeking a return of her security deposit along with a return of the filing fee. The tenant explained that she provided the landlord with her forwarding address in writing on October 19, 2017 after she placed a letter containing the address in his mailbox. The tenant said that following the conclusion of the tenancy she did not give the landlord written permission to withhold any part of her security deposit.

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. However, this provision does not apply if the 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 landlord applied for dispute resolution within 15 days of receiving a copy of the tenants' forwarding address on the corrected effective date of October 22, 2017, or following the conclusion of the tenancy on September 30, 2017. If the landlord had concerns arising from the tenancy, the landlord should have applied for dispute resolution to retain the security deposit.

Pursuant to section 38 of the *Act*, I find that the tenant is entitled to a monetary award of \$1,350.00 representing a doubling of the tenants' deposit which the landlord continues to hold.

As the tenant was successful in her application, she 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 \$1,450.00 against the landlord. This amount includes a return of the security deposit with the penalty provision included and a return of the filing fee. The tenant is 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.

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: July 4, 2018

Residential Tenancy Branch