



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT MNSD

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.

The landlord did not attend this hearing which lasted approximately 10 minutes. The tenant attended and was given a full opportunity to opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that they had served the landlord with with their application for dispute resolution dated December 6, 2017 and evidentiary materials by registered mail sent on that date. The tenant provided a Canada Post tracking number as evidence of service. Based on the evidence, I find that the landlord was served with the hearing package on December 11, 2017, five days after mailing, in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Background and Evidence

The tenant provided undisputed testimony regarding the following facts. This periodic tenancy began in October, 2016 and ended on December 31, 2016. A security deposit

of \$600.00 was paid at the start of the tenancy. No condition inspection report was prepared at either the start or end of the tenancy.

The tenant testified that they provided their forwarding address to the landlord by having a letter hand delivered to the landlord on or about January 10, 2017. The tenant submitted into written evidence copies of text messages from the landlord where the landlord acknowledges receipt of the forwarding address and taunts the tenant that they will not have their security deposit returned. The tenant said that they had not provided any written authorization that the landlord may retain any portion of the security deposit. The landlord has not returned any portion of the security deposit for this tenancy.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security 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 or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the undisputed evidence of the tenant that this tenancy ended on December 31, 2016 and that a forwarding address was provided in writing by a letter hand delivered to the landlord on or about January 10, 2017. I accept the undisputed evidence that the landlord has not returned the security deposit in full nor have they filed an application to retain the deposit. In fact, the tenant has submitted evidence that the landlord, in violation of the *Act* and regulations has taunted the tenant with their intention to withhold the security deposit when they have no right under the *Act* to do so.

Furthermore, the tenant testified that no condition inspection report was prepared at any time for this tenancy. Pursuant to section 24 of the *Act*, a landlord who fails to prepare a condition inspection report in accordance with section 23 extinguishes their right to claim against the security deposit.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days from January 10, 2017. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these

circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$1,200.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1,200.00 against the landlord. 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 23, 2018

Residential Tenancy Branch