



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the tenant's notice of hearing package via Canada Post Registered Mail. The tenant did not submit any documentary evidence. The landlord submitted documentary evidence which was served to the tenant via Canada Post Registered Mail on July 16, 2018. The tenant disputed service. The landlord provided the Canada Post Customer Receipt Tracking number and a review of the online website shows that the package was received by Canada Post on July 16, 2018 and that the tenant had signed in receipt of the package on July 18, 2018. The tenant then recanted her statement and confirmed service of the landlord's documentary evidence.

As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant seeks a monetary claim of \$725.00 which consists of:

\$362.50	Return of Original Security Deposit
\$362.50	Compensation, Fail to Comply, Sec. 38(6)

The tenant claims that the landlord has failed to return the original \$362.50 security deposit after the end of the tenancy. Both parties confirmed that the tenancy ended on August 15, 2017 when the tenant vacated the rental space. Both parties confirmed that a \$362.50 security deposit was paid to the landlord by the tenant. The tenant claimed that the forwarding address in writing for the return of the security deposit was given to the landlord sometime in October 2017. The landlord confirmed receiving the forwarding in writing as claimed, but was unable to verify a specific date.

The landlord confirmed that permission was not given by the tenant to retain the security deposit, nor did the landlord file an application for dispute of returning it.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, I accept the undisputed affirmed testimony of both parties and find that the tenancy ended on August 15, 2017 when the tenant vacated the rental space. I also accept that the \$362.50 security deposit is still currently held by the landlord and that the landlord did not have permission from the tenant to retain it nor did the landlord file an application to dispute its return. Both parties confirmed that the tenant provided her forwarding address in writing for the return of the \$362.50 security deposit. The tenant claims that this took place sometime in October 2017. The landlord could not confirm nor specify a date for receiving it.

On this basis, I find that the landlord failed to return the \$362.50 security deposit within the allowed 15 day period. As such, the tenant is entitled to the return of the \$362.50 security deposit.

I find based upon the undisputed affirmed evidence of both parties that the landlord having failed to return the \$362.50 security deposit within the 15 day period nor did he file an application to dispute it's return is required under section 38(6) of the Act to pay a monetary award equal to the \$362.50 security deposit.

The tenant has established a monetary claim of \$725.00.

Conclusion

The tenant is granted a monetary order for \$725.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the 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 26, 2018

Residential Tenancy Branch