



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MENKIS CONSTRUCTION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FF

Introduction

This was convened in response to an application from the tenant 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 B.S. (the "tenant") attended 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 and evidentiary package were sent to the landlord by way of Canada Post Registered Mail on December 9, 2017. A copy of the Canada Post tracking number was provided to the hearing by the tenant. Pursuant to sections 88, 89 & 90 of the *Act*, the landlord is deemed served with these documents, on December 14, 2017, five days after their posting.

Issue(s) to be Decided

Is the tenant entitled to a return of the security deposit?

Can the tenant recover the filing fee?

Background and Evidence

The tenant provided undisputed testimony that this tenancy began on January 3, 2017. Rent was \$1,900.00 per month and a security deposit of \$950.00 paid at the outset of the tenancy was returned to him via cheque on April 3, 2018.

The tenant explained that a 1 Month Notice to End Tenancy was served to him on August 26, 2017 and he vacated the property on October 3, 2017. The tenant said he provided the landlord with his forwarding address in writing on October 3, 2017, the same day the parties met to perform the condition inspection of the rental unit and to return the keys. The tenant said he did not agree to surrender any part of the security deposit to the landlord. On December 11, 2017 the tenant applied for dispute resolution for a return of the 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 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 tenant's forwarding address on October 3, 2017, or following the conclusion of the tenancy on the same date. If the landlord had concerns arising from the tenancy, the landlord should have applied for dispute resolution to retain the security deposit.

Testimony was provided by the tenant that the landlord did return the full amount of the deposit to him on April 3, 2017. *Residential Tenancy Policy Guideline 17* states as follows:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit. This *Policy Guideline* then goes on to list the same information stated above as contained in section 38 of the *Act*.

In cases where some funds have been returned to the tenant, the *Policy Guideline* notes, “the arbitrator doubles the amount paid as a security deposit, then deducts the amount already returned to the tenant, to determine the amount of the monetary order.”

In this case, twice the amount of the security deposit is \$1,900.00, less the \$950.00 returned to the tenant on April 3, 2018.

Pursuant to section 38 of the *Act*, I find that the tenant is entitled to a monetary award of \$950.00 representing a doubling of the tenant’s deposit, less the amount already returned.

As the tenant was successful in his application, he may recover the \$100.00 filing fee associated with this application pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order in the tenant’s favour in the amount of \$1,050.00 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: August 2, 2018

Residential Tenancy Branch