



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Property Management Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with an application by the tenant for a monetary order under the *Residential Tenancy Act* (the *Act*) for the following:

- a return of the security deposit under Section 38; and
- reimbursement of the filing fee under Section 72.

The tenant attended the hearing and provided affirmed testimony. The tenant was given the opportunity to make submissions as well as present oral and written evidence.

The landlords did not attend the hearing. I kept the teleconference line open from the time the hearing was scheduled for an additional 25 minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct participant code for the landlord had been provided.

The tenant provided affirmed testimony she sent the Notice of Hearing and the tenant's evidentiary package to the landlords by registered mail in early January 2018. The tenant did not submit the Canada Post tracking number in support of service and could not locate the tracking number. The tenant could not recall the date of mailing.

Although the landlords did not appear at the hearing and the tenant could provide no evidence of service by registered mail, the landlords filed materials in response to the tenant's claim, which were served upon the tenant by registered mail. The tenant acknowledged receipt of the materials and I find the tenant was served pursuant to section 89.

The tenant did not submit any evidence of service upon the respondent JD regarding the Notice of Hearing and evidentiary materials.

I therefore find that the respondent JD was not been served in accordance with section 89 and the claim against the respondent JD is dismissed with leave to reapply.

The corporate landlord is hereafter referred to as “the landlord”.

Preliminary Issue # 1 Service upon Corporate Respondent

The tenant testified that she served the landlord by registered mail and through oversight did not have the tracking number or proof of service with her at the time of the hearing.

I considered Rule 7.4 of the Rules of Procedure which states in part:

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Further to Rule 7.4, I considered the landlords’ materials in determining whether the tenant has affected service of the Notice of Hearing and evidentiary materials.

Included in the landlord’s materials is a letter dated January 10, 2018 to the tenant from the landlord which references this file number and states:

“Further to the evidence package with cover letter dated January 9, 2018, please find enclosed additional evidence against the above noted claim. A copy of all documents has also been submitted to the Residential Tenancy Branch in preparation for the hearing scheduled on August 2, 2018 at 1:30 PM.”

I have considered the reference to this file number and the acknowledgement in the above letter that the corporate landlord received the evidence package and was aware of the time and date of this hearing.

I find the corporate landlord was sufficiently served with the Notice of Hearing and the tenant’s evidentiary materials pursuant to section 71(2)(b) of the Act.

Preliminary Issue # 2 Description of Corporate Respondent

As a second preliminary issue, the tenant sought to amend their application to include two corporate names for the corporate landlord’s name.

The above-mentioned letter referred to the corporate landlord using initials and the words "Rental Management Ltd." On the other hand, the lease, signed by the parties, listed the landlord as "including the last name of the other named respondent with the words "Property Management Ltd".

I noted from materials filed by the parties that the corporate landlord communicated with the tenant under both versions of the corporate name.

In reviewing the materials filed by the parties, I am satisfied there is one corporate landlord and that the two names are one and the same.

I therefore grant the tenant's application to amend the respondents in this hearing to correct the corporate landlord's name as follows:

"DPM Rental Management Ltd. also known as Dennison Property Management Ltd.".

Issues to be Decided

- Is the tenant entitled to a monetary award equivalent to double the value of the security deposit because of the landlord's failure to comply with the provisions of Section 38 of the Act?
- Is the tenant entitled to reimbursement of the filing fee under Section 72 of the Act?

Background and Evidence

A copy of the residential tenancy agreement between the parties was submitted as evidence as well as the Condition Inspection Report on moving out.

The tenant provided affirmed evidence as follows:

- The parties entered into a residential tenancy agreement starting August 1, 2016, for monthly rental of \$1,350.00;
- At the beginning of the tenancy, the tenant provided a security deposit in the amount of \$675.00;
- The tenant vacated the rental unit on November 30, 2017;
- The tenant provided her forwarding address in writing in the Condition Inspection Report dated November 30, 2017, which was signed by both parties in each other's presence;
- The tenant did not authorise the landlord to retain any specified amount of the security deposit;

- The tenant was sent \$312.50 by cheque from the landlord dated December 15, 2017, and received by her December 18, 2018, as partial return of her security deposit.

The tenant testified the landlord retained the balance of the security deposit as reimbursement for cleaning and repairs which were deducted from the security deposit. The tenant testified these deductions were without her authorization, the condition inspection report on moving out indicated no damage to the premises, and the tenant did not consent to any specified amount for a partial reimbursement of her security deposit.

The tenant testified no proceedings for dispute resolution had been commenced by the landlord against the tenant with respect to the security deposit.

Analysis

I have reviewed all evidence and testimony before me meeting the requirements of the rules of procedure. However, I refer to only the relevant facts and issues in this decision.

The *Act* contains comprehensive provisions regarding security and pet damage deposits.

As stated in section 38 of the *Act*, the landlord is required to either return the tenant's 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 receipt of the tenants' forwarding address in writing.

Section 38 states as follows:

38 (1) 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.

If that does not occur, the landlord must pay a monetary award equivalent to double the value of the security deposit. Section 38(6) states as follows:

(6) 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

However, this provision does not apply if the landlord has obtained a tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find the tenant has provided her forwarding address in writing pursuant to section 38(1)(b) on November 30, 2017 as the address was written in the Condition Inspection Report signed by the parties in each other's presence.

I find the tenant did not provide consent to the landlord to keep any portion of the security deposit pursuant to section 38(4)(a).

In situations such as this, section 38(1)(c) requires the landlord to either file a claim against the security deposit within 15 days of the receipt of the tenant's forwarding address or return the security deposit.

I find the landlord has not filed an application against the security deposit within 15 days of receipt of the tenant's forwarding address on November 20, 2018. I further find the landlord has not returned the security deposit, but only a portion of it.

Therefore, the doubling provisions of section 38(6)(b) apply.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlord is in breach of the *Act* by failing to return the full security deposit or apply for dispute resolution as required.

I find the tenant is entitled to double the amount of the security deposit (\$1,350.00) and reimbursement of the filing fee (\$100.00) for a total monetary order of \$1,450.00 calculated as follows:

Double the deposit (2 x \$675.00)	\$675.00
	\$675.00
Filing fee	\$100.00
(Less amount of deposit returned to tenant)	(\$312.50)
Monetary Award to Tenant	\$1,137.50

Conclusion

I order the landlord pay to the tenant the sum of **\$1,137.50** pursuant to sections 38 and 72 of the *Act*. The landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this 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: August 10, 2018

Residential Tenancy Branch