



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On June 23, 2018, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

This hearing was scheduled as a cross-application with another tenant’s Application (the file number is on the first page of this decision). This other Application involved a similar claim from a separate tenant seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Act* and seeking recovery of the filing fee pursuant to Section 72 of the *Act*. These matters were set down at the same time on October 19, 2018 at 1:30 PM as both tenants lived in the same rental unit but had their own, separate tenancy agreements, also known as tenants in common. All parties agreed that both files would be heard during the same Dispute Resolution proceeding, but each file would be heard as separate matters. All parties agreed that the parties would stay connected to the teleconference call for both hearings.

Both the Tenant and the Landlord attended the hearing. C.S. was in attendance as well and waited for the conclusion of this file so that his file could then be addressed. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package to the Landlord by registered mail on June 27, 2018 and he provided a registered mail tracking history to confirm service to the Landlord. As well, he advised and provided evidence that the address he mailed this package to was the Landlord’s address on the tenancy agreement. The Landlord confirmed that this was her correct address, but she stated

that she did not receive this package as she was “out of town”. Regardless, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was deemed to have received the Notice of Hearing package five days after it was served by registered mail.

The Landlord stated that she had only been advised of the hearing date when she received an email from the Residential Tenancy Branch two weeks before the hearing; however, records indicated that she submitted evidence to this file on September 26, 2018. She then changed her answer and stated that she received the email from the Residential Tenancy branch more than three weeks ago.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a return of double the security deposit?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on August 1, 2017 and the tenancy ended when the Tenant vacated the premises on May 31, 2018. The signed tenancy agreement indicated that this was a fixed term tenancy for a period of six months. Rent was established at \$1,100.00 per month due on the first day of each month. A security deposit of \$550.00 was also paid.

The Tenant advised that he provided the Landlord with his forwarding address in writing by courier on April 30, 2018. He sent this to the Landlord’s address provided on the

tenancy agreement and he referenced a courier receipt submitted into evidence to prove service.

The Landlord stated that she never received this letter. As well, she advised that she sent an electronic transfer of \$250.00 to each of the tenants a week after the tenancies ended and she deducted fees that she believed the tenants owed. She also confirmed that she did not return the security deposit in full nor did she make an Application to keep the deposit after the tenancy ended. She advised that she did not have the Tenant's written consent to keep any portion of the deposit.

The Tenant confirmed that she sent him an electronic transfer of \$250.00; however, when he checked his records, this was actually sent on June 23, 2018. He submitted that he refused this electronic transfer and referenced evidence that the Landlord has dealt with the security deposit in the same manner with other tenants. Submitted into evidence is an electronic transfer receipt to the other tenant confirming this amount was sent to C.S. on June 23, 2018.

During the hearing, the Landlord was cautioned multiple times regarding her disruptive behaviour; however, she continued to interrupt the flow of the proceeding, to interrupt parties, and to make disparaging remarks about the other parties. The Landlord was cautioned just prior to 2:00 PM that the continuance of this behaviour would lead to her being muted during the conference call.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on a balance of probabilities, I am satisfied that the Landlord was deemed to have received the Tenant's forwarding address in writing prior to the Tenancy ending. As the tenancy ended on May 31, 2018, I find that May 31, 2018 is the date which initiated the 15-day time limit for the Landlord to deal with the deposit. The undisputed evidence before me is that the Landlord did not return the security deposit in full or make an Application to keep the deposit within 15 days of May 31, 2018. Furthermore, there is no provision in the *Act* which allows the Landlord to retain a portion of the deposit without authority under the *Act* or having the Tenant's written consent.

As the Landlord did not return the security deposit in full or make an Application to retain it within 15 days of May 31, 2018, the Landlord in essence illegally withheld the deposit contrary to the *Act*. Thus, I am satisfied that the Landlord breached the requirements of Section 38.

While the Landlord testified that she sent an electronic transfer of \$250.00 to both tenants within a week of the tenancy ending, I have evidence before me that she electronically transferred this amount to C.S. on June 23, 2018. Furthermore, the Tenant advised that according to his records, the Landlord electronically transferred him \$250.00 on June 23, 2018 as well. I find the evidence before me of the tenants is more consistent and bears more weight than the unsupported testimony of the Landlord. Moreover, in conjunction with her conflicting testimony with respect to when she had been made aware of this hearing and her demeanor during the hearing, I find her testimony to be less accurate or credible on this point. Based on this, I am not satisfied that the Landlord attempted to return the portion of the security deposit within a week of the tenancy ending as she purports.

As such, I find that the Tenant has established a claim for a monetary award amounting to double the **entire**, original security deposit. Under these provisions, I grant the Tenant a monetary award in the amount of **\$1,100.00**.

As the Tenant was successful in his claims, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Item	Amount
Double the security deposit	\$1,100.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$1,200.00

This portion of the hearing concluded at 2:13 PM and I advised the parties that the remaining hearing time would be turned towards the file listed on the first page of this Application.

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$1,200.00** 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: October 22, 2018

Residential Tenancy Branch