



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

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;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence. The tenant stated that the landlord was served with the notice of hearing package and the submitted documentary evidence in person with a witness on March 9, 2018. I accept the undisputed affirmed testimony of the tenant and find that the landlord has been properly served as per sections 88 and 89 of the Act. Although the landlord failed to attend the hearing the landlord is deemed 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 all or part of the security deposit and recovery of the filing fee?

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 \$260.00 for the return of the entire security deposit paid to the landlord and for recovery of the \$100.00 filing fee.

The tenant claims that the tenancy began on April 1, 2017 on a month-to-month basis, but that there was no signed tenancy agreement. The monthly rent was \$515.00 payable on the 1st day of each month. A security deposit of \$260.00 was paid. The tenant stated that the tenancy ended on January 30, 2018 and that the tenant's forwarding address in writing was served to the landlord on February 1, 2018. The tenant has submitted in support of this claim:

A copy of hand written receipt dated March 30, 2017 for \$260.00 for "Deposit".

A copy of a typed letter dated February 1, 2018 requesting the return of the security deposit and providing the tenant's forwarding address.

A copy of a letter from the landlord dated January 30, 2018 detailing the landlord's request to end the tenancy and some noted claims for damages.

The tenant stated that she is not aware of an application for dispute of the return of the tenant's security deposit nor is she aware of an order from the Residential Tenancy Branch authorizing the landlord to retain it. The tenant stated that at no time has permission been given to the landlord to keep the security deposit.

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.

I accept the undisputed affirmed evidence of the tenant and find that the landlord was served with the tenant's forwarding address in writing for the return of the security deposit on February 1, 2018. Pursuant to section 38 the tenant is entitled to return of the original \$260.00 security deposit as the landlord has not received permission from the tenant to retain the security deposit, nor did the landlord make an application to dispute its return.

Pursuant to section 38(6), I also find that as the landlord has failed to comply with section 38(1) of the act the landlord is subject to section 38(6) and is liable for an amount equal to the \$260.00 security deposit.

The tenant has established a claim for \$520.00. I also find that the tenant having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$620.00.

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: September 25, 2018

Residential Tenancy Branch