



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution ("application") under the *Residential Tenancy Act* ("Act"). The tenant applied for a monetary order for double the return of their security deposit under the *Act*, and to recover the cost of the filing fee.

The tenant and the landlord attended the teleconference hearing and provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions during the hearing. A summary of the evidence is provided below and includes only that which is relevant to the hearing. The hearing process was explained to the parties and an opportunity to ask questions was provided to both parties.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issue to be Decided

- Is the tenant entitled to the return of double their security deposit under the *Act*?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The landlord does not dispute that the tenancy began on December 1, 2015 and that the landlord purchased the rental property in January or February of 2017. The parties agreed that the tenancy ended on September 2, 2017 when the tenant vacated the rental unit.

At the start of the tenancy, the tenant paid a security deposit of \$1,100.00 which the landlord confirmed he received from the previous owner when he purchased the property. The landlord continues to hold the tenant's security deposit of \$1,100.00.

During the hearing, the landlord confirmed that he received the tenant's written forwarding address by mail in October 2017 and has not applied to claim against the security deposit and has not returned any of the \$1,100.00. The tenant testified that he provided his written forwarding address to the landlord in October 2017. The parties confirmed that the tenant has not agreed in writing for the landlord to retain any of the \$1,100.00 security deposit.

The tenant filed their application to claim for double the return of the security deposit plus the recovery of the cost of the filing fee on February 8, 2018.

Analysis

Based on the above, the evidence of the parties, and on a balance of probabilities, I find the following.

Tenant's claim for the return of double the security deposit – I accept the landlord's testimony that they have not returned any of the tenant's security deposit, has not claimed against the tenant's security deposit and did not obtain written permission to withhold any amount of the tenant's security deposit.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an arbitrator, or the written agreement of the tenant. In the matter before me, I find the landlord did not have any authority under the *Act* to keep any portion of the security deposit and did not

return any of the \$1,100.00 security deposit to the tenant within 15 days in accordance with the *Act*. Section 38 of the *Act* applies which states:

Return of security deposit and pet damage deposit

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.

(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.

[My emphasis added]

In the matter before me, I find that the landlord breached section 38 of the *Act* by failing to return the tenant's security deposit in full to the tenants within 15 days of October 2017 which I will give the benefit to the landlord being the last day in October 2017 which was October 31, 2017 as neither party had a specific date in October 2017 when the written forwarding address was provided. Therefore, the last possible date the landlord had was November 15, 2017 to avoid a penalty under the *Act*. The landlord has not returned any amount of the security deposit to the tenant as of the date of the hearing, September 6, 2018. In addition, the landlord did not make a claim towards the

security deposit and did not have the written permission of the tenant to retain any portion of the security deposit.

Given the above, I find the tenant is entitled to the return of double the original security deposit of \$1,100.00 for a total of \$2,200.00. As the tenant's application was successful, I grant the tenant **\$100.00** pursuant to section 72 of the *Act* for the recovery of the cost of the filing fee.

Monetary Order – I find that the tenant has established a total monetary claim in the amount of **\$2,300.00** comprised of \$2,200.00 for double the original security deposit plus the \$100.00 filing fee. Therefore, I grant the tenant a monetary order pursuant to section 67 of the *Act* for the amount owing by the landlord to the tenant in the amount of \$2,300.00.

I caution the landlord to comply with section 38 of the *Act* in the future.

Conclusion

The tenant's application is successful.

The tenant has established a total monetary claim in the amount of \$2,300.00 as indicated above. The tenant has been granted a monetary order pursuant to section 67 of the *Act* in the amount of \$2,300.00 which is owed by the landlord to the tenant. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 7, 2018

Residential Tenancy Branch