



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSD**

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.

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 landlord did not attend at the hearing. I kept the teleconference line open from the time the hearing was scheduled for an additional ten 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 testified he personally served the landlord with the Notice of Hearing and Application for Dispute Resolution by leaving a copy with the landlord in her residence. I find the landlord was served with the documents pursuant to section 89 of the *Act*.

Issue(s) 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*?

Background and Evidence

The tenant provided uncontradicted affirmed testimony that he entered into a residential tenancy agreement with the landlord starting April 1, 2016 for rent of \$625.00 a month payable on the first of the month. The tenant stated the landlord did not provide with a copy of the tenancy agreement.

At the beginning of the tenancy, the tenant testified he provided the landlord with a security deposit and a pet deposit (together, "the deposit"), each in the amount of \$312.50, for a total of \$625.00. The landlord holds the deposit. The tenant gave the landlord authorization to retain \$50.00 of the deposit, leaving a balance of \$575.00. The landlord has not returned the balance to the tenant.

The tenant testified he vacated the premises on October 30, 2017.

The tenant provided his forwarding address for the return of the deposit by letter dated October 26, 2017 which he posted to the landlord's door, thereby effecting service under sections 88 and 90 on October 29, 2017. The tenant submitted a copy of the letter as evidence.

The tenant stated the landlord did not bring an application for dispute resolution.

Analysis

I have reviewed all evidence and testimony before me and will refer only the relevant facts and issues meeting the requirements of the rules of procedure.

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

As stated in section 38 of the *Act*, the *Act* requires a landlord to either return the tenant's security 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 tenant's 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 under section 38.

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 the tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find the landlord has not brought proceedings for compensation or an application for dispute resolution claiming against the security deposit for any outstanding rent or damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I find the tenant provided the tenant's forwarding address in writing pursuant to section 38(1)(b) and did not provide consent to the landlord to keep any portion of the security deposit pursuant to section 38(4)(a) other than \$50.00.

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 security deposit or applying for dispute resolution as required.

The award to the tenant is summarized as follows:

| ITEM | AMOUNT |
|-----------------------------------|-------------------|
| Balance of the deposit | \$575.00 |
| Double the balance of the deposit | \$575.00 |
| Monetary Award Tenant | \$1,150.00 |

Conclusion

I order the landlord pay to the tenant the sum of **\$1,150.00** pursuant to section 38 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: November 05, 2018

Residential Tenancy Branch