



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The tenant confirmed receipt of the landlord's written evidence package on the day before and the day of this hearing by email. The tenant said that he did not have a chance to review the evidence because it was late and he was busy with school. The landlord confirmed that even though she received the tenant's application in June 2018, she sent her evidence late in November 2018 because she was busy and her father passed away. I notified the landlord that I could not consider her written evidence package because it was sent late, contrary to Rule 3.15 of the Residential Tenancy Branch *Rules of Procedure*, and the tenant did not have a chance to review it prior to the hearing. I also informed her that her evidence regarding the tenant's behaviour and possible other occupants in the unit during the tenancy were not relevant to this application.

Issues to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of the security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2017 and was for a fixed term ending on April 30, 2018. Monthly rent in the amount of \$1,000.00 was payable on the first day of each month. A security deposit of \$500.00 was paid by the tenant and the landlord continues to retain this deposit. No written tenancy agreement was signed by the parties. No move-in or move-out condition inspection reports were completed for this tenancy. A written forwarding address was sent by the tenant to the landlord by way of text message on April 29, 2018.

The tenant said that he vacated the rental unit on April 28, 2018. The landlord said that the tenant vacated on April 30, 2018. The landlord said that she did not have written permission to keep any amount from the tenant's security deposit. The landlord confirmed that she did not file an application for dispute resolution to retain any amount from the security deposit. She said that she had every intention of returning the deposit of \$500.00 to the tenant but things got busy and her father passed away.

The tenant seeks a return of double the amount of his security deposit of \$500.00, totalling \$1,000.00. He also seeks to recover the \$100.00 filing fee paid for this application.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the 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 section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the undisputed testimony of both parties. The tenancy ended at the end of April 2018. The tenant provided a written forwarding address by way of text message to the landlord on April 29, 2018. Although text message is not permitted by section 88 of the *Act*, the landlord confirmed that she received the address and had notice of it. Therefore, I find that the landlord was sufficiently served with the tenant's forwarding address as per section 71(2)(c) of the *Act*. The tenant did not give the landlord written permission to retain any amount from his security deposit. The landlord did not return the deposit or make an application for dispute resolution to claim against the deposit.

In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to receive double the value of his security deposit of \$500.00, totalling \$1,000.00. As the tenant was successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$1,100.00 against the landlord. 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: November 07, 2018

Residential Tenancy Branch