



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This was convened in response to an application from the tenant pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of the security or pet deposit, pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the tenant and the landlord attended the hearing by way of conference call. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant explained that the application for dispute and evidentiary package were sent to the landlord by way of Canada Post Registered Mail. She could not recall the exact date of their posting but the landlord confirmed receipt of these documents. Pursuant to sections 88 & 89 of the *Act*, the landlord is found to have been duly served with these documents in accordance with the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a return of her security deposit?

Can the tenant recover the filing fee?

Background and Evidence

The tenant explained this tenancy began in April 2017 and ended in April 2018. Rent was \$1,350.00 per month and deposits of \$675.00 each for pet and security were collected at the outset of the tenancy. The tenant said the landlord returned both of

these deposits “within a week following the tenancy” but retained \$252.00. The tenant seeks a return of these funds.

The landlord acknowledged he retained the amount in question but argued that landscaping and pressure washing were not performed during the tenancy and he said he required these services following the conclusion of the tenancy. The landlord confirmed that he did not apply for dispute resolution and held on to the \$252.00 from the tenant’s deposits to cover the costs associated with landscaping and pressure washing.

The tenant argued the landlord had no permission to retain any amount of her deposit and said no written permission was provided to the landlord to hold on to any portion of her deposits. As part of her evidentiary package, the tenant presented an email exchange between herself and the landlord in which she provided the landlord with her forwarding address.

Analysis

Section 38 of the *Act* requires the landlord to either return a tenant’s security or pet 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 upon receipt of the tenant’s 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 or pet 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 as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant’s security or pet deposit if an order to do so has been issued by an arbitrator.

No evidence was produced at the hearing that the landlord applied for dispute resolution within 15 days of receiving a copy of the tenant’s forwarding address or following the conclusion of the tenancy. If the landlord had concerns arising from the tenancy, the landlord should have applied for dispute resolution to retain the security or pet deposit. A landlord cannot unilaterally decide to retain any amount of a deposit without authorization from an arbitrator or from the tenant.

Testimony was provided by the tenant that the landlord did return \$1,098.00 of the \$1,350.00 paid in pet and security deposits at the outset of the tenancy, and retained \$252.00.

Based on the evidence before me, I find that the landlord has failed to return the tenant's security deposit and pet damage deposit in full or file an application claiming against the amount within the 15 days the end of the tenancy, as provided under section 38(1)(c) of the *Act*. I accept the tenant's evidence that she did not waive her right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. I accept the evidence that the tenant did not give written authorization that the landlord may retain any portion of the security and pet damage deposits. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a \$504.00 Monetary Order, double the value of the security deposit and pet damage deposit (2 x 252.00) that was held by the landlord without the tenant's authorization. No interest is payable over this period.

As the tenant was successful in her application, she may recover the \$100.00 filing fee associated with this application pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$604.00 against the landlord. This amount includes a return of the pet and security deposit with the penalty provision included and a return of the filing fee. The tenant is provided with a Monetary Order 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: November 6, 2018

Residential Tenancy Branch