



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* (the *Act*) for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 1:40 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant provided sworn, undisputed testimony that he had served the landlord with his application for dispute resolution hearing package ("Application") and evidence on by registered mail on July 20, 2018 to the landlord's address provided on the tenancy agreement. The tenant provided the tracking number in the hearing, and a copy of the tenancy agreement in his evidentiary materials.

The note provided by the post office is "*Item refused by recipient. Item being returned to sender*". Despite the fact that the landlord refused delivery of the package, I find that the tenant applicant served the landlord in accordance with sections 88 and 89 of the *Act*. In accordance with section 90 of the *Act*, I find that the landlord deemed served with the Application and evidence on July 25, 2018, five days after mailing.

Issues(s) to be Decided

Is the tenant entitled to the return of their security deposit pursuant to section 38 of the *Act*?

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

Background and Evidence

This month-to-month tenancy began on March 1, 2017, and ended on May 1, 2018. Monthly rent was set at \$550.00. The landlord had collected a security deposit of \$275.00 from the tenant, and still continues to hold that deposit. The tenant provided his forwarding address to the landlord at the inspection on May 1, 2018.

The tenant testified that he gave permission for the landlord to retain \$50.00 of his security deposit as indicated on the move-out inspection report. The tenant testified that on May 15, 2018 he received an email from the landlord indicating that the landlord will be retaining \$200.00 of his deposit as the tenant moved out a day late.

The tenant testified that he did not give permission for the landlord to retain \$200.00, nor did the landlord file an application to keep any portion of his money. The tenant testified that the email also stated that he would have to attend the old rental address to pick up the \$25.00 cheque, which the tenant did not cash.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the landlord has not returned the tenant's security deposit within 15 days of the provision of his forwarding address on May 1, 2018. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The tenant gave undisputed sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain more than \$50.00 of his deposit.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the original security deposit less the \$50.00 consented to on the move-out inspection report.

As the tenant was successful in his application, I find that the tenant is also entitled to recover the filing fee from the landlord.

Conclusion

I issue a Monetary Order in the tenant's favour under the following terms which allows the tenant to recover the original security deposit, plus a monetary award equivalent to the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*. I find the tenant is also entitled to \$100.00 for recovery of the filing fee for this application.

Item	Amount
Return of Security Deposit Less \$50.00	\$225.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	275.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$600.00

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of 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 20, 2018

Residential Tenancy Branch