



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On July 20, 2018, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing with M.L. as well. S.R. attended the hearing as agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package to the Landlord by registered mail on July 20, 2018 and S.R. confirmed that the Landlord received this package. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Landlord was served the Notice of Hearing package.

Both parties advised that their evidence was not served upon the other party. As neither party complied with the Rules of Procedure and served their evidence on each other, the evidence submitted to the Residential Tenancy Branch was not considered when rendering this decision. However, both parties were allowed to speak to their evidence and provide testimony during the hearing.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a return of double the security deposit?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started as a co-tenancy, with an unnamed co-tenant, on May 1, 2018 and the tenancy ended on May 31, 2018 when both tenants vacated the rental unit. Rent was established at \$800.00 per month, due on the first day of each month. A security deposit of \$425.00 was also paid.

The Tenant advised that she drove her mother to the Landlord's address and had her mother place an envelope, containing a letter with the Tenant's forwarding address in writing, into the Landlord's mailbox. The letter was addressed to S.R.'s attention. M.L. confirmed that she placed this envelope and letter into the Landlord's mailbox on June 1, 2018.

S.R. stated that she received no such envelope or letter and that the Landlord did not receive this either. She speculated that it is possible that another tenant of the rental unit may have taken this envelope mistakenly.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the 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 in full 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 pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the evidence before me, I have the affirmed testimony of the Tenant and her witness M.L. confirming that her forwarding address in writing was placed in the Landlord's mailbox on June 1, 2018. I find, based on a balance of probabilities, that the Tenant's testimony with a corroborating witness carries more weight as compared to S.R.'s testimony.

As such, I am satisfied that the Landlord more likely than not had been deemed to have received the Tenant's forwarding address in writing three days after it was placed in the mailbox. The Landlord did not return the security deposit in full or make an Application to keep the deposit within 15 days of June 4, 2018. Furthermore, there is no provision in the *Act* which allows the Landlord to retain a portion of the deposit without authority under the *Act* or having the Tenant's written consent.

As the Landlord did not return the security deposit in full or make an Application to retain it within 15 days of June 4, 2018, the Landlord in essence illegally withheld the deposit contrary to the *Act*. Thus, I am satisfied that the Landlord breached the requirements of Section 38. As such, I find that the Tenant has established a claim for a monetary award amounting to double the original security deposit. Under these provisions, I grant the Tenant a Monetary Order in the amount of **\$850.00**.

As the Tenant was successful in her claims, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Item	Amount
Double the security deposit	\$850.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$950.00

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$950.00** 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 29, 2018

Residential Tenancy Branch