



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARKHOME INVESTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

On August 13, 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 and M.K. attended the hearing as well, as agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package and her evidence, to the Landlord’s address on the tenancy agreement, by registered mail on August 15, 2018 and she provided a receipt of this (the registered mail tracking number is on the first page of this decision). The Landlord advised that she did not receive this package; however, she confirmed that the Landlord’s address for service was correct. In accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was deemed to have received the Notice of Hearing package and evidence five days after it was mailed.

The Landlord stated that she was advised of the Dispute Resolution proceeding by an email reminder from the Residential Tenancy Branch on November 11, 2018. She stated that she served her evidence to the Tenant by posting it on her door on December 6, 2018. The Tenant confirmed that she received this package on December 6, 2018 and that she was prepared to respond to it. While service of this evidence does not comply with the time frame requirements of Rule 3.15 of the Rules of Procedure, as the Tenant stated that she was prepared to respond, it was determined that it would not be prejudicial to the Tenant to accept this evidence. As such, this evidence was considered when rendering this decision.

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.

Both parties agreed that the most current tenancy started on September 1, 2017 and the tenancy ended on July 20, 2018 when the Tenant gave up vacant possession of the rental unit by handing the keys to the owner of the property. Rent was established at \$1,300.00 per month, due on the first day of each month. A security deposit of \$650.00 was also paid.

The Tenant advised that she emailed the Landlord on July 23, 2018 and provided her forwarding address in writing. She submitted documentary evidence of the email chain indicating that an employee of the Landlord acknowledged receiving this address and made reference to the Tenant's security deposit. In addition, the Tenant submitted documentary evidence of a letter that she sent to the Landlord via registered mail (the registered mail tracking number is on the first page of this decision) on July 24, 2018 containing her forwarding address in writing. The tracking history confirmed that the Landlord received this package on July 25, 2018. She also submitted documentary evidence of an email chain on August 2, 2018 where she emailed an employee of the Landlord advising her that she sent this registered mail letter and asking about the status of her deposit. The response from the employee on August 3, 2018 was that the owner of the company "instructed [her] not to mail [the Tenant's] deposit..."

The Landlord confirmed that the Tenant's forwarding address in writing had been received. Furthermore, she confirmed that they did not return the deposit in full or make an application through the Residential Tenancy Branch to keep the deposit. She advised that there has been some transition within the company and that she did not know that she had to either return the deposit or make an application to claim against it.

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 consistent and undisputed evidence before me, a forwarding address in writing was provided in two different manners by the Tenant and the Landlord confirmed receiving this. Furthermore, the evidence before me is that the Landlord received this on July 25, 2018 at the latest and did not return the security deposit in full or make an Application to keep the deposit within 15 days of this date. 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 July 25, 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 **\$1,300.00**. 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	\$1,300.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$1,400.00

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$1,400.00** 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: December 11, 2018

Residential Tenancy Branch