



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. This hearing lasted approximately 36 minutes.

The tenant testified that he served a copy of his application for dispute resolution hearing package to the landlord by way of registered mail on August 24, 2018. He provided a Canada Post receipt, tracking number and a photograph of the front of the envelope package, which was returned to sender. The landlord stated that he did not receive the application package, he only got an email from the Residential Tenancy Branch with a notice of hearing to attend. The tenant stated that the envelope photograph indicates that the package was returned to sender because it was refused by the recipient. The Canada Post tracking number on the website indicates the same. The landlord claimed that he could not recall refusing any mail from the tenant.

I notified both parties at the hearing that in accordance with sections 89 and 90 of the *Act*, I found that the landlord was deemed served with the tenant's application on August 29, 2018, five days after its registered mailing. I informed them that I would be considering the tenant's application at the hearing and in my decision because the landlord was deemed served with it even though he refused service. The landlord confirmed his understanding of same.

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 November 1, 2016 and ended on May 31, 2018. Monthly rent in the amount of \$1,250.00 was payable on the first day of each month. A security deposit of \$625.00 was paid by the tenant and the landlord continues to retain this deposit. The landlord issued a cheque for \$625.00 for the return of the deposit to the tenant but it was returned for insufficient funds. A written tenancy agreement was signed by both 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 a letter, dated June 19, 2018, and mailed on July 9, 2018. The landlord received the letter. The landlord did not have written permission to keep any amount from the tenant's security deposit. The landlord did not file an application for dispute resolution to retain any amount from the security deposit.

The tenant seeks a return of double the amount of his security deposit of \$625.00, totalling \$1,250.00. 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 on May 31, 2018. The tenant provided a written forwarding address by way of a letter, dated June 19, 2018, that was mailed to the landlord on July 9, 2018. The landlord confirmed receipt of this letter. The landlord confirmed that his cheque for the return of the deposit of \$625.00 to the tenant was returned for insufficient funds. 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 \$625.00, totalling \$1,250.00.

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 \$1,350.00 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: December 17, 2018

Residential Tenancy Branch