



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDCT 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;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials

The tenant indicated in the hearing that she was withdrawing her monetary application for compensation in the amount of \$1,800.00. Accordingly, this portion of the tenant's application is cancelled.

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 September 1, 2013, and ended on August 31, 2016 when the tenant had moved out. Monthly rent was set at \$2,000.00. The landlord had collected a security deposit of \$1,000.00 and a pet damage deposit in the amount of \$500.00 from the tenant, and still continues to hold both deposits. The tenant provided their forwarding address to the landlord at the move-out inspection on August 31, 2016, which was confirmed in the hearing.

The tenant testified that they had not received any portion of their security deposit or pet damage deposit from the landlord. The tenant testified that they did not give permission for the landlord to retain any portion of their deposits other than \$209.80 for utilities. The landlord confirmed that they did not file any applications to retain any portion of the tenant's deposits.

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 or pet damage deposit within 15 days of the provision of their forwarding address on August 31, 2016. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's deposits. The tenant gave undisputed sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain their deposits other than the \$209.80 for utilities.

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 \$209.80.

As the tenant was successful in their 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:

Item	Amount
Return of Security Deposit	\$1,000.00
Return of Pet Damage Deposit	500.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	1,500.00
Recovery of Filing Fee	100.00
Less \$209.80 for utilities	-209.80
Total Monetary Order	\$2,890.20

The tenant(s) are 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.

The tenant withdrew her monetary claim for painting.

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: January 7, 2019

Residential Tenancy Branch