



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served the landlord with the notice of hearing package. Both parties also confirmed that the tenant served the landlord with the submitted documentary evidence package via Canada Post Registered Mail on October 3, 2018. Both parties confirmed that the landlord served the tenant with submitted documentary evidence via Canada Post Registered Mail on December 7, 2018. It was clarified with both parties that although the landlord's evidence was not found within the uploaded documents in the Residential Tenancy Branch Files, both parties agreed that it was a 2 page document (bank statement) that confirmed that a "stop payment" of a \$394.10 on cheque #67 issued by the landlord. Neither party raised any other service issues. As both parties have attended and confirmed receipt of the notice of hearing package and the documentary evidence of either party, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

Extensive discussions between both parties revealed that the landlord had given a cheque for \$450.00 to the tenant which the tenant cashed. As such, the tenant has

cancelled the first portion of her application for return of the disputed amount of the security deposit. The hearing shall proceed on the tenant's request for compensation of \$500.00 under section 38(6) of the Act and if successful recovery of the \$100.00 filing fee.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant seeks a monetary claim of \$600.00 for

\$500.00	Compensation, Sec. 38(6) Fail to Comply
\$100.00	Filing Fee

Both parties agreed that the tenancy ended on August 29, 2018. Both parties agreed that the tenant provided her forwarding address in writing for return of the \$500.00 security deposit on August 29, 2018 as part of the completed condition inspection report for the move-out on August 29, 2018. The tenant also stated that it was previously provided as part of her notice to vacate given on July 27, 2018.

During the hearing both parties agreed that the landlord issued a cheque for \$450.00 for return of the remaining amount of the original \$500.00 security deposit.

Both parties agreed that the tenant had agreed to forfeit \$50.00 to the landlord from the \$500.00 security deposit for window covering cleaning as detailed in the completed condition inspection report dated August 29, 2018, leaving an outstanding \$450.00 security deposit to be returned. The landlord provided undisputed affirmed testimony that he did not have permission to retain the later found unpaid utilities of \$55.90 nor did the landlord make an application to dispute its return.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a 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 subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, I accept the undisputed affirmed testimony of both parties and find that the tenancy ended on August 29, 2018. I also find that the tenant provided her forwarding address in writing for return of the outstanding \$450.00 on August 29, 2018 as part of the completed condition inspection report for the move-out. The landlord also provided undisputed affirmed testimony that he did not have permission from the tenant to keep any part of the outstanding \$450.00 amount. The landlord confirmed that he did not return the \$450.00 nor did the landlord apply for dispute of returning it.

As such, I find that the tenant has been successful in establishing her claim for compensation under section 38(6) and is entitled to \$500.00 as claimed.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a \$600.00 monetary order.

This order must be served upon the landlords. Should the landlords fail to comply with the order, the 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: January 17, 2019

Residential Tenancy Branch