



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* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 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 each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that she personally delivered the notice of application for dispute resolution to the landlord's place of business on October 4, 2018. The landlord testified that he was out of the office on that date but received the notice of application for dispute resolution application on October 5, 2018. I find that the landlord was sufficiently served with the notice of dispute resolution application, in accordance with section 71 of the *Act*.

Issue(s) to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in December 2013 and ended on August 1, 2018. Monthly rent in the amount of \$860.00 was payable on the first day of each month. A security deposit of \$420.00 was paid by the tenant to the landlord.

The tenant testified that on or about September 17, 2018 she personally delivered a letter dated September 17, 2018 to the landlord's place of business. The letter provided the landlord with the tenant's forwarding address in writing and requested the return of her security deposit. The landlord testified that he received the tenant's forwarding address in writing on or around September 17, 2018. The landlord did not file an application with the Residential Tenancy Branch for authority to retain the tenant's security deposit.

Both parties agree on the following facts. The landlord did not return the tenant's security deposit. The tenant did not authorize the landlord to retain any portion of her security deposit.

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 August 1, 2018. The landlord did not return the security deposit or make an application for dispute resolution to claim against it. The tenant's forwarding address was sufficiently served on the landlord on or around September 17, 2018, pursuant to section 71 of the Act.

Over the period of this tenancy, no interest is payable on the landlord's retention of the security 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 \$840.00, which is double the security deposit.

As the tenant was successful in this application, I find that she is entitled to recover the \$100.00 filing fee from the landlord pursuant to section 72 of the Act.

Conclusion

I issue a Monetary Order to the tenant under the following terms:

Item	Amount
Double security deposit	\$840.00
Filing Fee	\$100.00
TOTAL	\$940.00

The tenant is provided with this Order 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: January 31, 2019

Residential Tenancy Branch