



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 506 FORT STREET HOLDINGS
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

On October 19, 2018, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit and pet damage 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; however, the Landlord did not make an appearance. 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 October 25, 2018 and she provided a receipt of this (the registered mail tracking number is on the first page of this decision). 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.

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 and pet damage 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.

The Tenant advised that the tenancy started on May 1, 2018 and the tenancy ended on September 30, 2018 when the Tenant gave up vacant possession of the rental unit. Rent was established at \$1,600.00 per month, due on the first day of each month. A security deposit of \$800.00 and a pet damage deposit of \$800.00 were also paid. A copy of the tenancy agreement was submitted into documentary evidence.

The Tenant advised that she emailed the Landlord on October 1, 2018 and provided her forwarding address in writing. She submitted documentary evidence of the email chain indicating that she provided her forwarding address to the Landlord's email address that she had been corresponding with previously. 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 October 6, 2018 containing her forwarding address in writing. The tracking history confirmed that this package was signed for on October 11, 2018.

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. Furthermore, the evidence before me is that the Landlord received the forwarding address on October 1, 2018 via email and did not return the security deposit or pet damage deposit in full or make an Application to keep the deposits within 15 days of this date. There is no provision in the *Act* which allows the Landlord to retain a portion of the deposits without authority under the *Act* or having the Tenant's written consent.

As the Landlord did not return the security deposit or pet damage deposit in full or make an Application to retain them within 15 days of October 1, 2018, the Landlord in essence illegally withheld the deposits 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 and pet damage deposit. Under these provisions, I grant the Tenant a Monetary Order in the amount of **\$3,200.00**.

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	\$1,600.00
Double the pet damage deposit	\$1,600.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$3,300.00

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$3,300.00** 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: February 15, 2019

Residential Tenancy Branch