



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROMPTON REAL ESTATE SERVICES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

FFT MNSD

Introduction

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

- An order for the landlord to return all or part of a security deposit pursuant to section 38; and
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:42 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M.

The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant's witness MVS testified that the landlord was served the Notice of Hearing package by registered mail on November 22, 2018. The tenant's witness provided a tracking number, noted on the cover page of this decision. I find that the landlord has been deemed served with the Notice of Hearing package five days later, on November 27, 2018 in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

Should the remainder of the tenant's security deposit be returned to him?
Can the tenant recover the filing fee?

Background and Evidence

The tenant provided the following testimony. The rental unit is located in a building whose age is approximately one year old. The tenancy began on February 1, 2017 as a one year lease with rent set at \$2,100.00 per month, becoming a month to month tenancy at the conclusion of the

one year term. The landlord collected a security deposit in the amount of \$1,050.00. The tenancy ended on July 31, 2018 by mutual agreement.

The tenant testified that he notified the landlord notice of his forwarding address by registered mail on September 27, 2018. A copy of the letter sent, together with the registered mail tracking receipt was provided as evidence showing the letter was mailed out on October 2, 2018. The tracking number is listed on the cover page of this decision.

A condition inspection report was completed at the beginning and the end of the tenancy, submitted as evidence by the tenant. On August 9, 2018, the tenant received an email from the landlord advising him that there is damage to the rental unit and to the common property of the building caused by the tenant and/or his guests. The landlord advised the tenant that they would not only retain the full security deposit, but that the tenant is indebted to the landlord for an additional \$723.30 due to chip damage to the veneer of the refrigerator's laminate.

The landlord provided a record of how they intended to use the tenant's \$1,050.00 security deposit:

Item	Cost
Blinds Repair & removal of hanging rail	\$85.00
Keys replacement	\$9.39
Pool Table Cover & green cloth charged back by strata	\$478.91
Repair chips on cabinet, freezer and refrigerator doors	\$1,200.00
Total:	(\$723.30)

The tenant testified that he acknowledges the damage done to the pool table and does not dispute the damage to the blinds and hanging rail or key replacement. The landlord's letter indicates that the freezer and refrigerator cannot be repaired without fully replacing the face with a new sheet of laminate costing \$1,200.00.

Subtracting the \$1,200.00 repair to the freezer and refrigerator doors which the tenant testifies should be considered normal wear and tear, the tenant argues that he is entitled to the remaining \$476.70 of his original \$1,050.00 security deposit. The tenant applied for dispute resolution for a return of his security deposit based on that amount.

On October 16, 2018, the landlord sent a further letter to the tenant advising that rather than seeking \$723.30 from the tenant, they were willing to reduce his record of security deposit statement to zero since the remainder of the panels purchased could be used elsewhere in the building in the future. The tenant did not respond to the letter; the tenant filed for dispute resolution on November 20, 2018.

Analysis

I find the landlord was deemed served with the tenant's forwarding address on October 7, 2018, five days after sending it by registered mail, in accordance with sections 88 and 90 of the *Act*.

Section 38(1) of the *Act* describes a landlord's responsibility regarding security deposits, reprinted below (emphasis added):

Except as provided in subsection (3) or (4) (a), **within 15 days** after the later of
(a) the date the tenancy ends, and
(b) the date the landlord receives the tenant's forwarding address in writing,
the landlord must do one of the following:
(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The landlord received notice of forwarding address in writing on October 7, 2018, obligating him to either return the tenant's security deposit or make an application for dispute resolution within 15 days. The landlord did neither of these actions.

In accordance with section 38(1) of the *Act*, the tenant is entitled to a return of the full security deposit in the amount of \$1,050.00 however since the tenant's application sought only return of \$476.70, his claim is limited to this amount. Section 17-3 of the *Residential Tenancy Policy Guidelines* states as follows, "Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit." I find the tenant has waived his entitlement to a doubling of the deposit and I grant the tenant a monetary award for **\$476.70**.

As the tenant was successful in his application, he is entitled to recover the **\$100.00** filing fee.

Conclusion

I find the tenant is entitled to monetary compensation in the amount of **\$576.70**.

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 25, 2019

Residential Tenancy Branch