



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 the landlord was served the notice of dispute resolution package by registered mail on October 20, 2018. The landlord confirmed receipt of the dispute resolution package but did not know on what date. I find that the landlord was deemed served with this package on October 25, 2018, five days after its mailing, in accordance with sections 89 and 90 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 was a one-month tenancy that began at the beginning of September 2018 and ended at the end of September 2018. Rent for September 2018 in the amount of \$975.00 was paid by the tenant to the landlord. A security deposit of \$465.00 was paid by the tenant to the landlord.

Both parties agreed to the following facts. A move in condition inspection report (RTB form 27) was completed on September 1, 2018. Some areas of the move in condition inspection report are difficult to read due to light ink. On page 3 of the move in inspection report the tenant provided her forwarding address in writing. The tenant testified that since this was a short-term tenancy agreement she knew where she would be living from October 1, 2018 onwards.

In the section of the move in condition inspection report where the tenant could agree to deductions from her security deposit, she filled in her name and the full amount of the security deposit but did not sign her name or write the date. In the section below the deduction section is space for both the tenant and the landlord to sign on completion of the report. The ink in this section was so light as to almost be illegible; however, it is clear that the tenant signed the report, but the landlord did not.

The landlord argued that in signing the move in condition inspection report the tenant provided him with authorization, in writing, to retain her entire security deposit. The tenant testified that she never provided the landlord with written authorization to retain any of her deposit and that she signed the move in inspection report to confirm she completed it.

The landlord testified that the tenant verbally authorized him to retain all of her security deposit. The tenant denied the landlord's claim.

The landlord testified that he did not file an application with the Residential Tenancy Branch for authority to retain the tenant's 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 tenants' 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 tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings. The tenancy ended at the end of September 2018. The tenant provided the landlord with her forwarding address on the move in inspection report on September 1, 2018. The landlord did not return the security deposit or make an application for dispute resolution to claim against it. The tenant did not sign the section of the move in condition inspection report authorizing the landlord to retain her security deposit. The tenant's signature slightly below this section pertains to a different section of the move in inspection report, not the security deposit deduction section.

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 \$930.00, which is double the security deposit. Although the tenant did not apply to obtain a return of double the deposit, they did not specifically waive their right to it. Accordingly, I must consider the doubling provision as per Residential Tenancy Policy Guideline 17.

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 in the amount of \$1030.00.

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: February 14, 2019

Residential Tenancy Branch