



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 an application by the tenant for a monetary order under the *Residential Tenancy Act* (the *Act*) for the following:

- A return of the security deposit under section 38;
- A monetary order as compensation under section 51 (2) and 67; and
- Reimbursement of the filing fee under section 72.

The tenant attended the hearing and provided affirmed testimony. The tenant had the opportunity to make submissions as well as present oral and written evidence. The landlord did not attend the hearing. I kept the teleconference line open from the time the hearing was scheduled for an additional ten minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct participant code for the landlord had been provided.

The tenant testified he served the landlord with the Notice of Hearing and evidentiary materials by registered mail on October 24, 2018. He provided the Canada Post tracking number in support of service referenced on the first page of this decision. Further to sections 89 and 90 of the *Act*, I find the landlord was served on the 5th day after mailing, being October 29, 2018.

Issue(s) to be Decided

- Is the tenant entitled to A return of the security deposit under section 38;
- A monetary order as compensation under section 51 (2) and 67; and
- Reimbursement of the filing fee under section 72.

Background and Evidence

The tenant provided affirmed and uncontradicted testimony as follows. The parties entered into a verbal residential tenancy agreement on September 26, 2018 in which they agreed the tenant would rent a unit from the landlords to begin on October 1, 2018. The tenant provided a security deposit of \$475.00 and submitted as evidence a copy of the receipt signed by the landlord TH on behalf of both landlords.

Shortly afterward, the landlords informed the tenant they were selling the unit and they cancelled the agreement. The tenant demanded a return of the security deposit. The landlords promised in text messages to return the deposit to the tenant. The tenant submitted copies of the text messages as evidence. In one such message dated October 16, 2018, the landlord MK texts the tenant as follows [as written]:

[tenant TH] message me asking if I could cover the deposit I said I could help out but I totally forgot to message or her back. I'm sorry. Just been busy.

The landlords have not returned the deposit to the tenant. The tenant has not provided the landlords with any authorization to retain the deposit.

The tenant provided his forwarding address to the landlords by registered mail sent on October 24, 2018 and submitted the Canada Post tracking number in support of service referenced on the first page of this decision.

The tenant requests a monetary order for the return of the security deposit.

Analysis

I have reviewed all evidence and testimony before me and will refer only to the relevant facts and issues meeting the requirements of the rules of procedure.

The *Act* contains comprehensive provisions regarding security and pet damage deposits.

As stated in section 38 of the *Act*, the landlord is required to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit, 15 days after the later of the end of a tenancy and receipt of the tenant's forwarding address in writing.

Section 38 states as follows:

38 (1) 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.

If that does not occur, the landlord must pay a monetary award equivalent to double the value of the security deposit.

Section 38(6) states as follows:

(6) If a landlord does not comply with subsection (1), the landlord
(a) may not make a claim against the security deposit or any pet damage deposit, and
(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable

However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find the landlord has not brought proceedings for compensation or an application for dispute resolution claiming against the security deposit for any outstanding rent or damage to the rental unit pursuant to section 38(1)(d) of the *Act*. I find the landlord cancelled the agreement with the tenant within a few days of the tenant's provision of the deposit and failed to return the deposit as required.

I find the tenant provided his forwarding address in writing pursuant to section 38(1)(b) on October 29, 2018, five days after mailing pursuant to section 90 of the *Act*, and did not provide consent to the landlord to keep any portion of the security deposit pursuant to section 38(4)(a).

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlord is in breach of the *Act* by failing to return the security deposit or applying for dispute resolution as required.

As the tenant was successful in this application, I award the tenant reimbursement of the filing fee of \$100.00 pursuant to section 72.

I award the tenant a monetary order in the amount of **\$1050.00**. The award to the tenant is summarized as follows:

ITEM	AMOUNT
Security Deposit	\$475.00
Double the Security Deposit	\$475.00
Reimbursement of the filing fee	\$100.00
Monetary Award Tenant	\$1050.00

Conclusion

I order the landlords pay to the tenant the sum of **\$1050.00** pursuant to sections 38 and 72 of the *Act*. The landlords must be served with a copy of this order as soon as possible. Should the landlords fail to comply with this 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: February 19, 2019

Residential Tenancy Branch