



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

On October 29, 2018, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for compensation pursuant to Section 67 of the Act, and seeking recovery of the filing fee pursuant to Section 72 of the Act.

The Tenant attended the hearing and the Landlord attended the hearing as well, with S.M. appearing as his agent. All in attendance provided a solemn affirmation.

At the outset of the hearing, the Landlord requested an adjournment as S.M. would not be able to stay for the entire hearing. Rule 7.9 of the Rules of Procedure provides the applicable criteria for the granting of an adjournment. As this hearing was scheduled months ago, and as the Landlord could have made alternate arrangements for translating services, I find that adjourning the hearing would be prejudicial to the Tenant. As such, I did not allow the Landlord’s request for an adjournment.

The Tenant advised that he served the Notice of Hearing package and his evidence, to the Landlord’s address on the tenancy agreement, by registered mail on October 30, 2018. The Landlord eventually acknowledged that he received this package after initially denying that he received it. Based on this undisputed testimony and in accordance with Sections 89 and 90 of the Act, I am satisfied that the Landlord was served the Notice of Hearing package and evidence.

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?
- Is the Tenant entitled to monetary compensation?
- 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.

Both parties agreed that the tenancy started on February 28, 2018 and the tenancy ended on August 31, 2018 when the Tenant gave up vacant possession of the rental unit. Rent was established at \$900.00 per month, due on the 28th day of each month. A security deposit of \$500.00 was also paid. A copy of the tenancy agreement was submitted as documentary evidence.

The Tenant advised that he left a piece of paper in the rental unit with his forwarding address in writing on August 31, 2018. In addition, the Tenant mailed a registered letter to the Landlord on September 18, 2018 and provided his forwarding address in writing (the registered mail tracking number is on the first page of this decision). The Tenant submitted a copy of the registered mail receipt to corroborate service.

The Landlord advised that he did not receive the paper that the Tenant left in the rental unit and he did not receive the registered mail that the Tenant sent on September 18, 2018.

The Tenant is seeking double the security deposit in the amount of **\$1,000.00** as the Landlord did not comply with the *Act*. As well, he is seeking **\$50.00** because he paid \$950.00 for rent in August 2018. However, he stated that he did not have proof of this overpayment.

The Landlord stated that he did not receive an overpayment of rent in August 2018 as the Tenant only paid him \$900.00.

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 evidence before me, a forwarding address in writing was provided by the Tenant on September 18, 2018 by registered mail. While the Landlord denies receiving this package, the tracking history indicates that this package was refused. As such, and according to Section 90 of the *Act*, I am satisfied that this letter was deemed received on September 23, 2018, five days after being mailed.

The undisputed evidence before me is that the Landlord did not return the security deposit or make an Application to keep the deposit within 15 days of September 23, 2018. 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 in full or make an Application to retain it within 15 days of September 23, 2018, the Landlord in essence illegally withheld the deposit 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. Under these provisions, I grant the Tenant a Monetary Order in the amount of **\$1,000.00**.

With respect to the Tenant's claim for reimbursement of the overpayment of August 2018 rent, as the Tenant has failed to provide any evidence to substantiate this claim, I dismiss this claim in its entirety.

As the Tenant was successful in his 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	\$1,000.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$1,100.00

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$1,100.00** 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 22, 2019

Residential Tenancy Branch