



Dispute Resolution Services

Page: 1

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* ("Act") for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord acknowledged receipt of evidence submitted by the tenant. The landlord did not submit any documentation for this hearing. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The tenant's testimony is as follows. The tenancy began on April 15, 2018 and ended on October 1, 2018. The tenants were obligated to pay \$2800.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1400.00 security deposit and a \$200.00 pet deposit. The tenant testified that written condition inspection reports were not conducted at move in or move out. The tenant testified that she provided her

forwarding address in writing to the landlord on August 31, 2018 and again later by text message. The tenant is seeking the return of double her deposits \$1600.00 X 2 = \$3200.00. The tenant is also seeking the recovery of the \$100.00 filing fee.

The landlord gave the following testimony. The landlord testified that he was out of the country and that he was going through a divorce. The landlord testified that he did not intentionally avoid paying the tenant but it was a difficult time for him. The landlord testified that the tenant left the unit dirty and damaged and would like to resolve the matter outside of the hearing.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant said she is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that 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.

And Section 38 (6) says 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.**

The landlord confirmed and acknowledged that he did not have the tenants' authorization to retain the deposit and that he has not filed an application seeking to

retain the deposit. Based on the testimony of the tenant, and the documentary evidence before me, I find that the landlord has not acted in accordance with Section 38 of the Act and that the tenant is entitled to the return of double his deposits in the amount of \$3200.00.

The tenant is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The tenant has established a claim for \$3300.00. I grant the tenant an order under section 67 for the balance due of \$3300.00. This order may be filed in the Small Claims 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 26, 2019

Residential Tenancy Branch