



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RYNIC ENTERPRISES INC. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

On November 7, 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*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and Landlord attended the hearing. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package to the Landlord by registered mail on November 9, 2018 and the Landlord confirmed that she received this package. 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.

The Tenant advised that he served his evidence to the Landlord by registered mail on February 19, 2019; however, the Landlord advised that she did not receive this evidence. Based on Section 90 of the *Act*, this evidence would be deemed received after 5 days. Furthermore, Rule 3.14 of the Rules of Procedure requires that the Tenant’s evidence be deemed received not less than 14 days before the hearing. As the Landlord did not receive this evidence and as service of this evidence does not comply with Rule 3.14, I have not accepted this evidence or considered it when rendering this decision. However, the Tenant was allowed to provide testimony with respect to this evidence during the hearing.

The Landlord advised that she did not submit any documentary evidence for consideration on this file.

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 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 September 1, 2015 and the tenancy ended on August 31, 2018 when the Tenant gave up vacant possession of the rental unit. Rent was established at \$850.00 per month, due on the first day of each month. A security deposit of \$425.00 was also paid.

Both parties agreed that the tenancy was a co-tenant situation and that one tenant moved out prior to the end of the tenancy. As well, the Tenant remained in the rental unit and paid the rent until the end of the tenancy.

The Tenant advised that he provided the Landlord with his forwarding address in writing via a letter that he mailed to her on October 9, 2018. The Landlord confirmed that she received this letter on October 12, 2018.

She stated that she did not return the deposit in full or make an application to keep the deposit as she had a letter in writing, signed by the co-tenant on October 16, 2018, authorizing her to keep the entire deposit. However, she did not submit a copy of this letter as documentary evidence to corroborate this testimony. She advised that she consulted with the Residential Tenancy Branch and was advised not to submit any evidence to this file as her concerns related to the Tenant not ending the tenancy in writing, pursuant to the *Act*.

The Landlord also advised that she did not conduct a move-in or move-out inspection report.

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 October 9, 2018 by mail and the Landlord confirms receiving this letter on October 12, 2018. As such, I am satisfied that the forwarding address in writing was received on October 12, 2018.

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 October 12, 2018. While she advised that she had the co-tenant's written consent to keep the deposit, there has been no documentary evidence submitted before me to corroborate this statement. The only consistent and agreed upon evidence before me is that the Tenant's forwarding address in writing was received by the Landlord on October 12, 2018 and that she neither returned the deposit in full or made an application to keep it within 15 days of this date. As such, I find that this agreed upon testimony carries more weight than the Landlord's unsupported testimony that she had the co-tenant's written authorization to keep the deposit.

As the Landlord did not return the security deposit in full or make an Application to retain it within 15 days of October 12, 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 **\$850.00**.

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	\$850.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$950.00

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$950.00** 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: March 8, 2019

Residential Tenancy Branch