



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNSD

Introduction

This hearing was convened in response to an application from the tenant pursuant to the *Residential Tenancy Act* (“*Act*”) for:

- authorization to obtain a return of the security and pet deposit, pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the landlord and the tenant attended the hearing by way of conference call. All parties present were provided an opportunity to present their submissions, ask questions and cross-examine one another.

The tenant testified she sent a copy of her application for dispute and evidentiary package to the landlord by way of Canada Post on an unknown date. The landlord confirmed receipt of these documents and said he had a chance to review them. Pursuant to sections 88 & 89 of the *Act* the landlord is found to have been duly served in accordance with the *Act*.

The landlord confirmed he did not serve the tenant with his evidentiary package. Rule of Procedure 3.15 notes, “The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent’s evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.” I find the landlord has failed to serve the landlord with his evidentiary package in a manner allowable under the *Act* and therefore decline to consider his evidentiary package.

Issue(s) to be Decided

Is the tenant entitled to a return of the pet and security deposit?

Can the tenant recover the filing fee?

Background and Evidence

The parties agreed that this tenancy began on November 1, 2016 with a \$600.00 security deposit being paid to the landlord. On July 1, 2017 the parties signed a new tenancy agreement. Monthly rent was to be \$900.00 and two deposits of \$475.00 each for pet and security were paid to the landlord. The tenant explained the \$600.00 deposit previously paid was put towards the payment of these \$475.00 deposits.

The tenant vacated the property on September 1, 2018. The tenant provided her forwarding address via text message to the landlord on September 11, 2018. The landlord acknowledged receipt of this forwarding address. The landlord said that he declined to return either deposit due to an excessive amount of damage to the rental unit. Furthermore, the landlord alleged the tenant had broken a term of their lease and had failed to provide adequate notice.

Analysis

Section 38 of the *Act* requires a landlord to either return a tenant's security or pet 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 upon receipt of the tenant's 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 or pet deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

I find no evidence was presented that the tenants agreed in writing to allow the landlord to withhold any portion of their security or pet deposits. I therefore order the landlord to return all portions of the tenant's security and pet deposits. The fact that damage may be present in the rental unit is irrelevant if the landlord has not taken steps to apply to

withhold either deposit. As the tenant failed to provide the landlord with her forwarding address in writing and did so only via text message, I decline to award a doubling of the deposits.

Since the tenant was successful in her application, she may recover the \$100.00 filing fee pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order in the tenant's favour as follows:

ITEM	AMOUNT
Return of Security Deposit	\$475.00
Return of Pet Deposit	475.00
Return of Filing Fee	100.00
TOTAL =	\$1,050.00

The tenant is awarded a monetary order of \$1,050.00 against the landlord. 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 14, 2019

Residential Tenancy Branch