



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 the tenant's application pursuant to the *Residential Tenancy Act* (the *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 this 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 call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of their security deposit pursuant to section 38 of the *Act*?

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

Background and Evidence

This fixed-term tenancy began on January 1, 2017, and ended on December 31, 2018. Monthly rent was set at \$1,500.00, payable on the first of each month. The landlord had collected a security deposit in the amount of \$1,500.00 at the beginning of the tenancy, and continues to hold this deposit.

The landlord confirmed that the tenant provided her forwarding address on December 28, 2018, the day of the move-out inspection. The landlord did not dispute the fact that he had kept the tenant's deposit, stating that he retained the deposit as compensation for damage and cleaning. The landlord provided evidentiary materials in support of his losses. The landlord testified that he did not file any applications to keep the deposit as he does not reside in Canada, and is unaware of his obligations under the *Act*. The landlord issued the tenant a partial refund of her deposit in the amount of \$1,225.00. The tenant testified that she did not receive this cheque dated January 15, 2019 until January 24, 2019, and the envelope indicates that the landlord sent the cheque on January 23, 2019.

The tenant testified that she did not give written authorization to allow the landlord to retain any portion of the security deposit.

Analysis

Section 38(1) of the *Act* requires a 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 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 return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the landlord had not returned the tenant's security deposit in full within 15 days of the end of this tenancy. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The tenant's agent gave sworn testimony that the landlord had not obtained her written authorization at the end of the tenancy to retain any portion of the tenant's security deposit.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the original security deposit. As the tenant has

been successful in his application, I find that the tenant is also entitled to recover the filing fee from the landlord.

Conclusion

I issue a Monetary Order in the tenant's favour under the following terms which allows the tenant to recover the portion of the security deposit retained by the landlord, plus a monetary award equivalent to the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*. The tenant is also entitled to recover the cost of the filing fee for this application.

Item	Amount
Return of Security Deposit	\$1,500.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	1,500.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$3,100.00

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of 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 25, 2019

Residential Tenancy Branch