



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROCKY MOUNTAIN PROPERTY MANAGEMENT COMPANY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of double her security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:40 pm in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 pm. The tenant's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant's agent and I were the only ones who had called into this teleconference.

The tenant's agent testified that the landlord was served the notice of dispute resolution form and supporting evidence package via registered mail on January 22, 2019. The tenant's agent provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the landlord was deemed served with this package on January 27, 2019, five days after the tenant mailed it, in accordance with sections 88, 89 and 90 of the Act.

Issue(s) to be Decided

Is the tenant entitled to the return of double her security deposit and the reimbursement of the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the tenant and the tenant's agent, not all details of the agent's submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The parties entered into a written tenancy agreement starting January 1, 2018. Monthly rent was \$1,195.00 payable on the first of each month. The tenant paid the landlord a security deposit of \$597.50.

On December 31, 2018, the tenant vacated the rental unit. She provided her forwarding address, via a letter, on November 28, 2018, in advance of the end of the tenancy.

The tenant's agent testified that the landlord did not return the security deposit by January 15, 2019, and did not respond to the tenant's inquiries about the return of the security deposit on January 12, 2019 or January 15, 2019.

On January 21, 2019, the tenant applied for the return of double her security deposit and the return of her filing fee.

The tenant's agent testified that, on February 7, 2019, the landlord paid the tenant \$597.50, representing the return of the security deposit, and \$100.00, representing the reimbursement of the filing fee. She testified that the landlord advised the tenant that he initially sent deposit to the wrong address.

The tenant's agent stated that the tenant wished to pursue her claim for the balance of the amount of double the security deposit and filing fee, calculated as follows:

Security Deposit	\$597.50	
	x2	
	\$1,195.00	
Filing Fee	\$100.00	
Subtotal	\$1,295.00	\$1,295.00
Return of deposit		-\$597.50
Repayment of filing fee		-\$100.00
	Total	
	Claimed	\$597.50

Analysis

Rule of Procedure 7.4 states:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

In light of the landlord's non-attendance at this hearing, despite being properly served with the notice of dispute resolution proceeding form, I elect not to consider any evidence the landlord has submitted prior to the hearing.

Section 38(1) of the Act states:

Return of security deposit and pet damage deposit

38 (1) 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.

I find that the tenancy ended on December 31, 2018, and that the tenant provided their forwarding address in writing to the landlord on November 28, 2018.

I find that the landlord has not returned the security deposit to the tenant within 15 days of receiving their forwarding address.

I find that the landlord has not made an application for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding address from the tenant.

Accordingly, I find that the landlord have failed to comply with its obligations under section 38(1) of the Act.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

- (6) 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 language of section 38(6)(b) is mandatory. As the landlord has to comply with section 38(1), I must order that it pay the tenant double the amount of the security deposit (\$1,150.00).

As the tenant has been successful in their application, she is entitled to have her filing fee of \$100.00 repaid by the landlord.

I accept the tenant's agent's testimony that the landlord has already paid the tenant \$697.50 (comprised of the return of the security deposit and the filing fee repayment). I order that this amount shall be credited against the amount of I have ordered the landlord pay, as follows:

Amount landlord ordered to pay	\$1,295.00
Return of deposit	-\$597.50
Repayment of filing fee	-\$100.00
Total	\$597.50

Conclusion

Pursuant to sections 67 and 72, I order that the landlord pay the tenant \$597.50.

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: April 3, 2019

Residential Tenancy Branch