



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the landlord 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*.

The landlord confirmed in the hearing that his surname was missing on the tenant's application. As both parties were not opposed, the landlord's name was amended to include the landlord's proper surname.

Issues(s) to be Decided

Is the tenant entitled to a monetary order for money owed for this tenancy?

Background and Evidence

Both parties confirmed the following facts. This month-to-month tenancy began on August 31, 2017, and ended on December 11, 2018. The monthly rent was set at \$1,150.00, payable on the first of the month. The tenant paid a security deposit in the amount of \$500.00 at the beginning of the tenancy, which the landlord still holds.

The tenant moved out on December 11, 2018, and provided her forwarding address to the landlord in writing on December 28, 2018. The tenant requested the return of her security deposit, less \$408.00 as a pro-rated payment for the December 2018 rent. The tenant confirmed in the hearing that she had not paid the December 2018 to the landlord, but allowed the landlord to keep a portion of her security deposit for the 11 days she had lived there.

The landlord's testimony is that he had kept the security deposit in satisfaction of the money owed for this tenancy. The landlord submitted evidentiary materials to support his losses, but confirmed that he had not filed any applications for compensation or to retain 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 tenant 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 tenants' 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 it was undisputed that the landlord had not returned any portion of the tenant's security deposit within 15 days of the provision of her forwarding address, nor did the landlord apply for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The tenant did give written permission for the landlord to retain \$408.00 as payment for her December 2018 rent, and requested the return of the remaining \$92.00.

I find that the landlord had failed to comply with section 38 of the *Act*, and therefore the tenant is entitled to a monetary order amounting to double the original security deposit less the \$408.00 agreed to by the tenant in satisfaction of money owed for this tenancy.

Conclusion

I issue a Monetary Order in the tenant's favour under the following terms which allows for the return of the security deposit retained by the landlord, plus a monetary award equivalent to the value of the security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*. A deduction will be made from this Monetary Order in the amount of \$408.00 as the tenant gave written permission for the landlord to retain this amount.

Item	Amount
Return of the Security Deposit retained by landlord	\$500.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	500.00
Less portion of security deposit tenant agrees landlord may keep	-408.00
Total Monetary Order	\$592.00

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: May 23, 2019

Residential Tenancy Branch