



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On February 20, 2019, 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*.

The Tenant attended the hearing; however, the Landlord did not make an appearance. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package and evidence to the Landlord’s address on the tenancy agreement, by registered mail, on February 22, 2019 (the registered mail tracking number is on the first page of this decision). 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 and evidence.

The Tenant was 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.

The Tenant advised that the tenancy started on September 1, 2015 and the tenancy ended on December 29, 2018 when the Tenant gave up vacant possession of the rental unit. Rent was established at \$923.32 per month, due on the last day of each month. A security deposit of \$416.00 was also paid.

She stated that she provided the Landlord with her forwarding address in writing on the move-out inspection report conducted on December 29, 2018. She provided a copy of this report as documentary evidence, and the report does not indicate that there were any deficiencies with the rental unit.

She stated that the Landlord returned her a cheque dated January 15, 2019, in the amount of \$281.00. She submitted that the Landlord deducted \$135.00 from the security deposit without her written consent. Furthermore, as documentary evidence, she submitted a letter dated February 5, 2019 requesting that the balance of her deposit be returned immediately. She advised that she deposited the Landlord's cheque of \$281.00 but has had no further contact from the Landlord.

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 undisputed evidence before me, a forwarding address in writing was provided by the Tenant on the move-out inspection report dated December 29, 2018. As the Tenant received a cheque from the Landlord on or around January 2019, I am satisfied that the Landlord was in possession of the Tenant's forwarding address in writing.

I find it important to note that Section 38 of the *Act* clearly outlines that once a forwarding address in writing is received, the Landlord must either return the deposit in full **or** make an application to claim against the deposit. There is no provision in the *Act* which allows the Landlord to retain a portion of the deposit without the Tenant's written consent.

The undisputed evidence before me is that the Landlord did not return the security deposit in full or make an Application to keep a portion of the deposit within 15 days of December 29, 2018. As the undisputed evidence is that the Landlord illegally withheld a portion of the deposit contrary to the *Act*, and did not comply with the requirements of Section 38, I find that the Tenant is granted a monetary award amounting to double the original security deposit. Under these provisions, I am awarding the Tenant \$832.00; however, as the Tenant has received a cheque in the amount of \$281.00, I am reducing this monetary award to \$551.00. As such, I grant the Tenant a monetary award in the amount of **\$551.00**.

As the Tenant was successful in her 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

Doubling of security deposit less the returned portion	\$551.00
Recovery of filing fee	-\$100.00
TOTAL MONETARY AWARD	\$651.00

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$651.00** 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: June 4, 2019

Residential Tenancy Branch