



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("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 its 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 make submissions, to call witnesses and to cross-examine one another. The landlord acknowledged receipt of evidence submitted by the tenant. The landlord testified that he served the tenant with his evidence by registered mail but did not provide the full address when he sent it causing it to be returned due to an incomplete address. As the landlord has not served any of his evidence to the tenant, it will not be considered as part of this decision as the landlord has not complied with Rule 3.16 of the Residential Tenancy Rules of Procedure. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

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

Background, Evidence

The tenant's testimony is as follows. The month to month tenancy began on February 1, 2019 and ended on March 31, 2019. The tenants were obligated to pay \$1550.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$775.00 security deposit. Written condition inspection reports were not done. The tenant

testified that he provided his forwarding address by registered mail on May 16, 2019. The tenant is seeking the return of double his deposit $\$775.00 \times 2 = \1550.00 . The tenant is also seeking the recovery of the \$100.00 filing fee.

The landlord gave the following testimony. The landlord testified that the tenant did not give a full months notice that he would be moving out. The landlord testified that the tenant gave notice on March 12, 2019 for a March 31, 2019 move out date. The landlord testified that the tenants caused him to lose a months' rent for April 2019 because of the short notice. The landlord testified that the tenant has not paid the utilities as agreed upon. The landlord testified that the tenant verbally agreed to allow him to keep the deposit and therefore the matter was resolved.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant said he is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that 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.

And Section 38 (6) says 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 landlord confirmed that he had not filed an application to retain the deposit or that he had obtained the tenants written permission to retain the deposit. Based on the

testimony of the tenant and the documentary evidence before me, I find that the landlord has not acted in accordance with Section 38 of the Act and that the tenant is entitled to the return of double his deposit in the amount of $\$775.00 \times 2 = \1550.00 .

The tenant is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The tenant has established a claim for \$1650.00. I grant the tenant an order under section 67 for the balance due of \$1650.00. This order may be filed in the Small Claims 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: October 03, 2019

Residential Tenancy Branch