



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 landlords pursuant to section 72.

While the tenant attended the hearing by way of conference call, the landlords did not. I waited until 1:40 p.m. to enable the landlords to participate in this scheduled hearing for 1:30 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant provided sworn, undisputed testimony that he had served the landlords with the tenant's application for dispute resolution hearing package ("Application") and evidence by way of registered mail on July 31, 2019. The tenant provided a tracking number in their evidence. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlords deemed served with the Application and evidence package on August 5, 2019, 5 days after mailing.

Issues(s) to be Decided

Is the tenant entitled to the return of their security deposit?

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

Background and Evidence

This month-to-month tenancy began on May 1, 2012, and ended on June 30, 2018 after the tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use. The tenant testified that monthly rent was set at \$3,000.00 at the end of the tenancy. The tenant paid a security deposit in the amount of \$1,400.00 at the beginning of the tenancy, which the landlords still hold.

The tenant testified that he sent the landlords a letter by way of registered mail on April 2, 2019 which included the provision of his forwarding address, and a request for the landlords to return his security deposit to him. The tenant testified that he has not received any response from the landlords, nor has he given permission for the landlords to keep the deposit. The tenant testified that the landlords have not filed any applications to retain any portion of his security deposit.

The tenant is requesting the return of his security deposit, as well as compensation for the landlords' failure to comply with section 38 of the *Act*.

Analysis

Section 38(1) of the *Act* requires that landlords, within 15 days of the end of the tenancy or the date on which the landlord receive the tenants' 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 tenants' 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 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 tenants agree in writing the landlords may retain the amount to pay a liability or obligation of the tenant."

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenants have specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenants' forwarding address is received in writing; ...*
- *whether or not the landlord may have a valid monetary claim.*

In this case, I find that the landlords have not returned the tenant's security deposit within 15 days of the provision of his forwarding address. The tenant gave undisputed sworn testimony that the landlords have not obtained his written authorization to retain any portion of the 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 was successful in this application, I find that the tenant is also entitled to recover the filing fee from the landlords.

Conclusion

I issue a Monetary Order in the tenant's favour under the following terms which allows the tenant to recover the original security deposit, plus a monetary award equivalent to the value of their deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*. I find the tenant is also entitled to \$100.00 for recovery of the filing fee for this application.

Item	Amount
Return of Security Deposit	\$1,400.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	1,400.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$2,900.00

The tenant is provided with this Order in the above terms and the landlords must be served with a copy of this Order as soon as possible. Should the landlords 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: November 5, 2019

Residential Tenancy Branch