



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD

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. The landlord joined the conference 8 minutes late but both parties 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 parties acknowledged receipt of evidence submitted by the other. 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 their 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 tenancy began on August 1, 2018 and ended on July 1, 2019. The tenants were obligated to pay \$1663.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$831.00 security deposit and \$484.00 pet deposit for a total of \$1315.00 in deposits. The tenant advised that the landlord has returned \$300.00 of the deposit. The tenant testified that a written condition inspection report was not conducted at move out. The tenant testified that she provided her forwarding address on July 2, 2019 by registered mail to the service address

provided by the landlord and as reflected on the tenancy agreement. The tenant is seeking the return of double her deposits as well as the recovery of the \$100.00 filing fee and the \$11.43 for registered mail costs.

The landlord gave the following testimony. The landlord testified that the tenant left the unit damaged and dirty at the end of the tenancy. The landlord testified that the tenant is responsible for the costs he incurred to make the unit rentable again.

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 she 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 did not have the tenants written authorization to retain any of the deposit, he did not have an order from the Branch allowing her to keep the deposit and that he has not filed an application to retain the deposit. Based on the testimonies of the parties 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 her deposits in the amount of $\$1315.00 \times 2 = \2630.00 minus the $\$300.00$ already paid = $\$2330.00$.

Section 72 of the act only allows an arbitrator to award the filing fee in terms of hearing related costs, as such I do find that the tenant is entitled to the recovery of the $\$100.00$ filing fee but not the $\$11.43$ for registered mail costs. The total award to the tenant is $\$2430.00$.

It is worth noting, that the landlord referred to damages and cleaning costs. It was explained to both parties in great detail that this decision only addressed the issue of the security and pet deposits. It was further explained that the landlord and tenant are at liberty to file their own application if there are any outstanding issues that cannot be resolved by the parties, both parties indicated that they understood.

Conclusion

The tenant has established a claim for $\$2430.00$. I grant the tenant an order under section 67 for the balance due of $\$2430.00$. 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: November 21, 2019

Residential Tenancy Branch