



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDCT 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;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 1:43 p.m. to enable the landlord 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. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant provided sworn, undisputed testimony that the landlord was served with the tenant's application for dispute resolution and evidence package on July 24, 2019. The tenant provided the tracking information in their evidence package. In accordance with sections 88, 89, and 90 of the *Act*, I find the landlord deemed served with the tenant's application and evidence for this hearing on July 29, 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 the monetary order requested?

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

Background and Evidence

The tenant testified that this tenancy began on April 1, 2019. Monthly rent was set at \$1,700.00, payable on the first of every month. The tenant resided there with other tenants, and her share of the monthly rent was \$566.00 per month. The tenant testified that she paid the landlord her portion of the security deposit which was \$283.00. The tenant also paid a pet damage deposit in the amount of \$150.00.

The tenant testified that she gave notice on June 15, 2019 to the landlord that she would be moving out on June 30, 2019. The tenant also provided a forwarding address, requesting the return of her security and pet damage deposits. The tenant provided a copy of this letter in her evidentiary materials, which was posted on the landlord's door. The tenant testified that on June 20, 2019 she was locked out by the landlord. The tenant testified that was not sure what happened with the other tenants still residing at the residence, but they may have been given new sets of keys.

The tenant is requesting the following monetary orders:

Item	Amount
Return of Security and Pet Damage Deposit	\$433.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	433.00
Return of Rent for June 20-30, 2019	189.00
Recovery of Filing Fee	100.00
Total Monetary Order Requested	\$1,155.00

Analysis

Section 31 of the *Act* states as follows:

Prohibitions on changes to locks and other access

31 (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

(1.1) A landlord must not change locks or other means of access to a rental unit unless

(a) the tenant agrees to the change, and

(b) the landlord provides the tenant with new keys or other means of access to the rental unit.

By changing the locks on June 20, 2019, I find the landlord failed to comply with sections 31 and 57 of the *Act*. I accept the undisputed testimony of the tenant that she had paid rent for the entire month of June 2019, but was denied access as of June 20, 2019. I allow the tenant's monetary claim for the return of her rent paid for the period of June 20, 2019 through to June 30, 2019 in the amount of \$189.00.

Residential Tenancy Policy Guideline #13 clarifies the rights and responsibilities relating to multiple tenants renting premises under one tenancy agreement.

"A security deposit or a pet damage deposit¹ is paid in respect of a particular tenancy agreement. Regardless of who paid the deposit, any tenant who is a party to the tenancy agreement to which the deposit applies may agree in writing to allow the landlord to keep all or part of the deposit for unpaid rent or damages, or may apply for arbitration for return of the deposit"

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 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 tenant's 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.”

I am satisfied that the tenant had provided undisputed evidence that she had paid the landlord \$283.00 as a security deposit, and a further \$150.00 for the pet damage deposit. I am satisfied that the tenant had provided her forwarding address to the landlord in writing. I find it undisputed that the landlord had failed to return her portion of the security deposit and her pet damage deposit within 15 days of the end of this tenancy. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant’s security deposit or pet damage deposit. The tenant gave sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain any portion of her deposits.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order in an amount equivalent to the original security deposit and pet damage deposit.

I allow the tenant to recover the filing fee for this application.

Conclusion

I allow the tenant’s monetary application for the landlord’s failure to comply with sections 38 and 31 of the *Act*. I issue a monetary order in the amount of \$1,155.00 in the tenant’s favour as set out in the table below.

Item	Amount
Return of Security and Pet Damage Deposit	\$433.00
Monetary Award for Landlord’s Failure to Comply with s. 38 of the <i>Act</i>	433.00
Return of Rent for June 20-30, 2019	189.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$1,155.00

The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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 26, 2019

Residential Tenancy Branch