



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNSD**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.
- An order for the landlord to return the security deposit pursuant to section 38;

Tenant ML attended for the tenants ("the tenant"). The landlord attended. The hearing process was explained, and the parties were given an opportunity to ask questions. Each party had the opportunity to call witnesses and present affirmed testimony and written evidence. No issues of service were raised. I find the tenant served the landlord in accordance with section 89 of the *Act*.

I informed the parties of the provisions of section 38 of the *Act* which require that the security deposit is doubled if the landlord does not return the security deposit to the tenant within 15 days of the later of the end of the tenancy or the provision of the tenant's forwarding address in writing.

Issue(s) to be Decided

Is the tenant entitled to the following:

- A monetary award equivalent to double the value of the security deposit because of the landlord's failure to comply with the provisions of section 38 of the *Act*?

- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

The parties agreed the tenancy started on August 1, 2018 and ended when the tenant vacated on August 31, 2019. Rent was \$1,900.00 monthly payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit of \$950.00 which the landlord holds.

The parties acknowledged that the tenant provided the forwarding address to the landlord on September 10, 2019.

The parties agreed the tenants have not provided consent to the landlord to retain any portion of the security deposit except for \$283.43. The tenant claimed reimbursement of the balance of the security deposit of \$666.57.

The parties agreed the landlord has not filed an application for dispute resolution and the landlord retains the entire security deposit for alleged damages.

The tenant claims reimbursement of double the security deposit as the landlord did not return the security deposit within 15 days of the later of the end of the tenancy or the provision of the forwarding address in writing. The tenant claimed as follows:

ITEM	AMOUNT
Security deposit	\$950.00
Double the Security Deposit	\$950.00
Reimbursement of the Filing Fee	\$100.00
TOTAL CLAIM	\$2,000.00

The landlord claimed the tenant was responsible for damages to the unit.

Analysis

I have reviewed all evidence and testimony before me and will refer only to the relevant facts and issues meeting the admissibility requirements of the rules of procedure.

The *Act* contains comprehensive provisions regarding security and pet damage deposits.

As stated in section 38 of the *Act*, the landlord is required to either return the tenants' security deposit in full or file for dispute resolution for authorization to retain the deposit, 15 days after the later of the end of a tenancy and receipt of the tenant's forwarding address in writing.

Section 38 states as follows:

38 (1) 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.

If that does not occur, the landlord must pay a monetary award equivalent to double the value of the security deposit.

Section 38(6) states as follows:

(6) 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

However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find the landlord has not brought proceedings for compensation or an application for

dispute resolution claiming against the security deposit for any outstanding rent or damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I find the tenant provided their forwarding address in writing pursuant to section 38(1)(b) at the end of the tenancy on September 10, 2019 as acknowledged by the landlord. I find the tenant did not provide consent to the landlord to keep any portion of the security deposit pursuant to section 38(4)(a) except for \$283.43 for outstanding utilities.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlord is in breach of the *Act* by failing to return the security deposit or applying for dispute resolution as required.

I find the tenant is entitled to a doubling of the security deposit. Accordingly, I grant the tenant a monetary award in the amount as claimed.

As the tenant was successful in their application, I further grant the tenant reimbursement of the filing fee.

My award to the tenant is summarized as follows:

ITEM	AMOUNT
Security deposit	\$950.00
Double the Security Deposit	\$950.00
Reimbursement of the Filing Fee	\$100.00
(less amount agreed upon by tenant)	(\$283.43)
TOTAL AWARD	\$1,716.57

The landlord may still file an application for alleged damages and outstanding utilities. However, the landlord is unable to make a monetary claim through the tenant's application pursuant to Rules of Procedures 2.1 which states as follows:

2.1 Starting an Application for Dispute Resolution

To make a claim, a person must complete and submit an Application for Dispute Resolution.

Therefore, the landlord must file their own application to keep the deposit within the 15 days of certain events, as explained above.

However, the issue of the security deposit has now been conclusively dealt with in this hearing.

Conclusion

I order the landlord pay to the tenant the sum of **\$1,716.57** and grant the tenant a Monetary Order in this amount.

The landlord must be served with a copy of this Monetary Order as soon as possible. Should the landlord fail to comply with this order, the 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: December 10, 2019

Residential Tenancy Branch