



Dispute Resolution Services

Page: 1

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 landlord pursuant to section 72.

While the tenant and her translator attended the hearing by way of conference call, the landlord did not. I waited until 1:40 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, her translator, 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 October 8, 2019 by way of registered mail. 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 October 13, 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 landlord?

Background and Evidence

The tenant provided the following testimony and evidence. The tenant testified that this fixed-term tenancy began on March 2, 2019, with monthly rent set at \$875.00, payable on the second day of each month. The tenant paid as security deposit in the amount of \$500.00 to the landlord, which the landlord still holds. The tenant moved out on September 15, 2019, and provided her forwarding address to the landlord on October 8, 2019. The tenant provided in her evidence the correspondence she sent the landlord about the return of her security deposit and her forwarding address.

The tenant testified that she had never given permission for the landlord to retain any portion of her deposit, nor has the landlord filed an application for dispute resolution.

Analysis

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.

In this case, I find that the landlord has not returned the tenant's security deposit within 15 days of the provision of their forwarding address on October 8, 2019. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The tenant gave undisputed sworn testimony that the landlord had not obtained her written authorization at the end of the tenancy to retain any portion of the security 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.

I note that the amount of the security deposit exceeds more than half the monthly rent. I remind the landlord that section 19(1) of the *Act* states that "*A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.*"

As the tenant was successful in their application, I find that the tenant is also entitled to recover the filing fee from the landlord.

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 security deposit as a result of the landlord's 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	\$500.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	500.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$1,100.00

The tenant(s) is provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord 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: December 13, 2019

Residential Tenancy Branch