



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:

- a monetary order for \$930 representing two times the amount of the security deposit, pursuant to sections 38 and 62 of the Act; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution form and supporting evidence package. The landlord testified, and the tenant confirmed, that the landlord served the tenant with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

Is the tenant entitled to:

- 1) a monetary order for \$930; and
- 2) recover her filing fee from the landlord?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting August 1, 2014. Monthly rent was \$925 and was payable on the first of each month. The tenant paid the landlord a security deposit of \$465.

On June 30, 2019, the tenant gave written notice that she would be ending the tenancy on July 31, 2019. She provided the landlord with her forwarding address on the same date.

The parties agree that the tenant vacated the rental unit on July 31, 2019.

On August 6, 2019, the landlord sent a letter to the tenant titled "security deposit refund summary" accompanied by a cheque for \$240 (the "**Cheque**"). The landlord wrote that she deducted:

- \$200 from the security deposit to replace blinds missing from the living room, master bedroom, small bedroom and kitchen; and
- \$25 from the security deposit for the cost of cleaning the oven.

The Cheque represented the return of the balance of the security deposit to the tenant (\$465 - \$225 = \$240). The tenant testified that she never agreed to any of the deductions. The landlord did not dispute this. The tenant testified that she has not yet cashed the Cheque, but still has it in her possession.

The landlord testified that she has not made an application at the Residential Tenancy Branch against the security deposit.

Analysis

Section 38(1) of the Act states:

Return of security deposit and pet damage deposit

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.

Based on the testimony of the parties, I find that the tenancy ended on July 31, 2019 and that the tenant provided her forwarding address in writing to the landlord on June 30, 2019.

I find that the landlord has not made an application for dispute resolution claiming against the security deposit within 15 days of the end of the tenancy.

I find that the landlord has not returned the full amount of the security deposit to the tenant within 15 days of receiving her forwarding address. I find that the landlord did return \$220 of the security deposit on August 6, 2019 in the form of the Cheque, and that the tenant has not cashed the Cheque.

Section 38 does not permit a landlord to make deductions from a security deposit unilaterally. In order to comply with section 38 of the Act, it is not enough for the landlord to allege the tenant damaged to the rental unit. A landlord must actually make an application for dispute resolution, claiming against the security deposit, within 15 days from the end of the tenancy.

The landlord did not do this. Accordingly, I find that she has failed to comply with her obligations under section 38(1) of the Act.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to comply with section 38(1):

- (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.

Policy Guideline 17 considers what is to happen in cases where a landlord makes a deduction from the security deposit without a tenant's consent and returns the balance.

5. The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

- Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held. The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ($\$800 - \$275 = \525).

As such, the fact that the landlord returned a portion of the security deposit to the tenant does not shield her from the doubling provision of section 38(6)(b).

I accept the tenant's testimony that she has yet to cash the Cheque, and as such, to date, she has received no portion of the security deposit back from the landlord.

As such, and as the landlord has failed to comply with section 38(1), I order that the landlord pay the tenant double the amount of the security deposit (\$930).

I am uncertain if the Cheque is still valid. If it is, the tenant may cash it, in partial satisfaction of the \$930 I have ordered the landlord pay the tenant. If she does, she must notify the landlord of this fact and the landlord must pay the balance of the monetary award (\$690). If the Cheque is no longer valid, the landlord must pay the full amount of the monetary award to the tenant. If the tenant receives separate payment of the \$930 from the landlord, the tenant is not entitled to cash the Cheque. I leave it to the parties to determine how they will proceed with regards to the Cheque.

As the tenant has been successful in her application, she is entitled to have her filing fee of \$100 reimbursed by the landlord.

Nothing in this application prevents the landlord from bringing an application against the tenant to recover damages she suffered due any alleged breach of the Act by the tenant during the tenancy.

Conclusion

Pursuant to sections 38, 62, and 72 of the Act, I order the landlord to pay the tenant \$1,030 representing the following:

Double the balance of the deposit (\$465)	\$930
Filing Fee	\$100
Total	\$1,030

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 16, 2019

Residential Tenancy Branch