



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding H & L CONDO SERVICES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FFT

Introduction

This hearing dealt with the tenants' 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 tenants 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 tenants were 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 tenants and I were the only ones who had called into this teleconference.

The tenants provided sworn, undisputed testimony that the landlord was served with the tenants' application for dispute resolution and evidence package on September 22, 2019. The tenants 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 tenants' application and evidence for this hearing on September 27, 2019, 5 days after mailing.

Issues(s) to be Decided

Are the tenants entitled to the monetary order requested?

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

Background and Evidence

The tenants testified to the following. This tenancy began on September 1, 2019, and ended on June 30, 2019. Monthly rent was set at \$1,885.00. The tenants paid a security deposit in the amount of \$940.00 to the landlords, which the tenants testified was returned to them on September 16, 2019 after they had filed this application.

The tenants testified that they had provided a forwarding address to the landlord on August 13, 2019, but the landlord failed to return their security deposit to them in full despite the provision of the forwarding address. The tenants provided a copy of the letter that was sent to the landlord. The tenants testified that the landlord had never filed an application to keep the security deposit, nor did they give permission for the landlord to keep the security deposit.

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. 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 tenants had provided undisputed evidence that the landlord had failed to return their security deposit to them in full until September 16, 2019. I am satisfied that the tenants had provided their forwarding address to the landlord on August 13, 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 tenants gave sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain any portion of their deposit.

In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order in an amount equivalent to the original security deposit.

As the tenants were successful with their application, I allow the tenants to recover the filing fee for this application.

Conclusion

I allow the tenants' monetary application for the landlord's failure to comply with section 38 of the *Act*. I issue a monetary order in the amount of \$1,040.00 in the tenants' favour as set out in the table below.

Item	Amount
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	\$940.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$1,040.00

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: January 20, 2020

Residential Tenancy Branch