



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 landlords pursuant to section 72.

While the tenant attended the hearing by way of conference call, the landlords did not. I waited until 1:40 p.m. to enable the landlords 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 landlords were served with the tenant's application for dispute resolution and evidence package on September 25, 2019. The tenant provided the tracking information in their evidence package along with a photograph of the envelope containing her documents addressed to the landlords. In accordance with sections 88, 89, and 90 of the *Act*, I find the landlords deemed served with the tenant's application and evidence for this hearing on September 30, 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 landlords?

Background and Evidence

The tenant provided the following evidence in support of her claim. The tenant testified that this fixed-term tenancy began on August 1, 2018, and ended on January 31, 2019. The tenant provided a forwarding address to the landlord on January 31, 2019. The tenant provided a statement from a witness confirming the provision of her forwarding address. Monthly rent was set at \$1,950.00, payable on the first of every month. The tenant paid a security deposit in the amount of \$900.00, and a pet damage deposit in the amount of \$300.00, which the landlords still hold.

The tenant is requesting the following monetary orders:

Item	Amount
Return of Security and Pet Damage Deposit	\$1,200.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	1,200.00
Recovery of Filing Fee	100.00
Total Monetary Order Requested	\$2,500.00

The tenant testified that she has not received any applications from the landlords for dispute resolution, nor has she given permission for the landlords to keep her deposits.

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 tenant had provided undisputed evidence that she had paid the landlord \$900 as a security deposit, and a further \$300.00 for the pet damage deposit. I am satisfied that the tenant had provided her forwarding address to the landlords on January 31, 2019, the same date she had moved out. I find it undisputed that the landlords had failed to return any portion of her deposits within 15 days of the end of this tenancy. There is no record that the landlords had 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 landlords 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 for the return of her deposits, plus an amount equivalent to the original security deposit and pet damage deposit for the landlords’ failure to comply with the *Act*.

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

Conclusion

I allow the tenant’s monetary application for the return of her deposits, plus compensation for the landlord’s failure to comply with sections 38 of the *Act*. I issue a monetary order in the amount of \$2,500.00 in the tenant’s favour as set out in the table below.

Item	Amount
Return of Security and Pet Damage Deposit	\$1,200.00
Monetary Award for Landlords’ Failure to Comply with s. 38 of the <i>Act</i>	1,200.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$2,500.00

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 23, 2020

Residential Tenancy Branch