



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. The landlord confirmed that no documentary evidence was provided for the hearing.

I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant seeks a monetary claim of \$2,300.00 which consists of:

\$1,100.00	Return of Original Security Deposit
\$1,100.00	Compensation, Fail to Comply Sec. 38(6)
\$100.00	Recovery of Filing Fee

The tenant provided affirmed testimony that he entered into a signed tenancy agreement to begin on November 1, 2018 and that a security deposit of \$1,100.00 was paid to the landlord. The tenant stated that he was informed by the landlord that he was going on vacation for a 3 week period and that the tenant would occupy the space during the term. The tenant stated that on the possession date of November 1, 2018, the landlord failed to attend and provide access and possession of the rental premises. The tenant stated that on November 2, 2018 a note in writing was posted to the rental premises (taped on door) requesting the landlord to return the \$1,100.00 security deposit to the tenant.

The landlord disputes the tenant's claim arguing that the rental premises is the landlord's full time residence and that on November 1, 2018, the tenant failed to attend to take possession of the rental unit. The landlord stated that there was no signed agreement and that upon his return from vacation, there was no posted note requesting return of the \$1,100.00 security deposit.

The landlord called a witness, D.M. who is a friend who assists the landlord when required. The witness, D.M. provided testimony that he saw the tenant give a \$1,100.00 security deposit to the landlord and cannot provide any further testimony on any other communications between the two parties.

The landlord confirmed in his direct testimony that a \$1,100.00 security deposit was paid by the tenant and that the landlord currently still holds it. The landlord has confirmed in his direct testimony that at no time has the landlord filed for dispute to retain it.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within

15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

I accept the undisputed evidence of both parties that a tenancy was established to begin on November 1, 2018 for a 3-week period. Both parties agreed that a security deposit of \$1,100.00 was paid by the tenant to the landlord. I also accept that possession of the rental unit did not take place and that the landlord still holds the \$1,100.00 security deposit.

In this case, I find that the tenant is entitled to return of the original \$1,100.00 security deposit as claimed. Although the tenant did not take possession of the rental unit, no claim has been made by the landlord against the security deposit.

The landlord argued that at no time has the landlord received from the tenant notice in writing requesting the return of the \$1,100.00 security deposit.

I also find on the tenant's request for compensation under section 38(6) that the tenant has failed to provide enough evidence that his forwarding address in writing was provided to the landlord on November 2, 2018 as claimed. The tenant relied solely on direct testimony which was disputed by the landlord. On this basis, the tenant has failed to provide sufficient evidence to support his claim.

The tenant has established a claim for the original \$1,100.00 security deposit. I also find that the tenant is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$1,200.00.

This order must be served upon the landlord. Should the landlord fail to comply with the 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: February 5, 2020