



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:

- authorization to obtain a return of all of their security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:40 pm in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 pm. The tenant attended the hearing and 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. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant testified that she served the landlord with the notice of dispute resolution form and supporting evidence package via registered mail on October 22, 2019. She provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the landlord was deemed served with this package on October 27, 2019, five days after the tenant mailed it, in accordance with sections 88, 89, and 90 of the Act.

Issues to be Decided

Is the tenant entitled to:

- 1) the return of the security deposit; and
- 2) recover her filing fee?

Background and Evidence

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

The tenant testified that the parties entered into a tenancy agreement starting December 1, 2017. Monthly rent was \$1,200. The tenant paid the landlord a security deposit of \$600. The landlord still retains this deposit.

The tenancy ended on September 30, 2019. On October 3, 2019 the tenant served the landlord personally with a letter requesting the return of her security deposit and providing her forwarding address. The tenant entered this letter into evidence.

The tenant testified that, to date, the landlord has not returned the security deposit to her. She testified that, to her knowledge, the landlord has not applied to the Residential Tenancy Branch to keep the security deposit.

Analysis

Section 38 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.

[...]

- (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.

Based on the uncontroverted testimony of the tenant, I find that the tenancy ended on September 30, 2019 and that the tenant served the landlord with her forwarding address on October 3, 2019. As such, per section 38(1), the landlord was required to either return the deposit to the tenant or apply to keep the deposit by October 18, 2019. I find that he did neither of these by October 18, 2019, or at all.

As such, per section 38(6), the landlord must pay the tenant an amount equal to double the security deposit (\$1,200).

Per section 72(1), as the tenant has been successful in her application, I order that the landlord reimburse her the filing fee (\$100).

Conclusion

The tenant's application is successful.

I order that the landlord pay the tenant \$1,300.

The tenant must serve the landlord with a copy of this decision and accompanying order within a reasonable time after having received it.

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 04, 2020

Residential Tenancy Branch