



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNCS, MNDCT, FFT

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant attended the hearing and was given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional fifteen minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord had been provided.

The tenant provided affirmed testimony that the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on October 24, 2019 and on November 25, 2019 and deemed received by the landlord

under section 90 of the *Act* five days later, that is, on October 29, 2019 and on November 30, 2019.

The tenant provided the Canada Post Tracking Numbers in support of service to which I refer on the cover page. Pursuant to sections 89 and 90, I find the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution on October 29, 2019 and November 30, 2019.

The tenant withdrew her claim under section 67. I dismiss that part of the tenant's claim without leave to reapply.

I informed the tenant of the provisions of section 38 of the *Act* which require that the security deposit is doubled if the landlord does not return the security deposit to the tenant within 15 days of the later of the end of the tenancy or the provision of the tenant's forwarding address in writing.

Issue(s) to be Decided

Is the tenant entitled to:

- An order for the landlord to return double the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

The tenant provided uncontradicted evidence as the landlord did not attend the hearing.

The tenant testified that the parties entered into a tenancy agreement that commenced in 2017 and ended on September 30, 2019. The tenant submitted a copy of the tenancy agreement. Rent was \$1,300.00 monthly payable on the first of the month.

At the beginning of the tenancy, the tenant provided a security deposit of \$650.00 which the landlord holds. The tenant did not provide authorization to the landlord to retain any of the security deposit.

The tenant testified that the tenant sent the landlord the tenant's forwarding address for the return of the security deposit on October 1, 2019 by text at the number used by the landlord to communicate regularly to the tenant. The tenant submitted a copy of the text.

The tenant testified that the landlord has not returned the security deposit or filed an application to retain it.

The tenant requested a monetary award of double the security deposit for the landlord's failure to return the security deposit within 15 days of the provision of the forwarding address.

The tenant testified that the landlord agreed to reimburse the tenant for one month's rent because the landlord requested the tenant to vacate so that a family member could occupy the unit. The landlord reimbursed the tenant one-half a month's rent and the tenant claimed that the landlord owed the remaining half, \$650.00. The tenant submitted a text dated October 24, 2019 from the landlord in which the landlord agreed to reimburse the tenant for the balance in this amount. The tenant testified the amount remained owing.

The tenant claimed a monetary award as follows:

ITEM	AMOUNT
Security deposit	\$650.00
Security deposit - doubled	\$650.00
Reimbursement ½ month's rent	\$650.00
Reimbursement filing fee	\$100.00
TOTAL CLAIM	\$2,050.00

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this

provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find that at no time has the landlord brought an application for dispute resolution claiming against the security deposit for any damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I accept the tenant's uncontradicted evidence they have not waived their right to obtain a payment pursuant to section 38 of the *Act*. I accept the tenant's evidence that the tenant gave the landlord written notice of their forwarding address on October 1, 2019.

Under these circumstances and in accordance with sections 38(6) and 72 of the *Act*, I find that the tenant is entitled to a monetary award of double the security deposit.

The tenant has provided uncontradicted, credible testimony supported by a text that the landlord promised to reimburse the tenant for one month's rent because the tenant moved out at the request of the landlord but that only ½ that amount was paid. I find the tenant has met the burden of proof on a balance of probabilities that the landlord undertook to reimburse the tenant for one month's rent and that ½ remains owing by the landlord to the tenant in the amount of \$650.00.

As the tenant has been successful in her claim, I grant her an award of \$100.00 for reimbursement of the filing fee.

In summary, I grant the tenant a monetary award calculated as follows:

ITEM	AMOUNT
Security deposit	\$650.00
Security deposit - doubled	\$650.00
Reimbursement ½ month's rent	\$650.00
Reimbursement filing fee	\$100.00
TOTAL AWARD	\$2,050.00

Conclusion

I grant the tenant a monetary order in the amount of **\$2,050.00** as described above.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) to be 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: March 12, 2020

Residential Tenancy Branch