



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On October 23, 2019, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit and pet damage deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. The Landlord attended the hearing as well, with S.L. attending the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing and evidence package was served to the Landlord by registered mail on November 28, 2019. The Landlord confirmed receipt of this package and had no concerns with service of this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing and evidence package.

S.L. advised that the Landlord’s evidence was served to the Tenant by registered mail on February 25, 2020 and the Tenant confirmed that she received this package. As this evidence was served in compliance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a return of double the security deposit and pet damage deposit?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on March 1, 2019 and the tenancy ended when the Tenant gave up vacant possession of the rental unit on August 14, 2019. Rent was established at \$1,100.00 per month, due on the first day of each month. A security deposit of \$550.00 and a pet damage deposit of \$450.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties also agreed that the Tenant provided her forwarding address in writing in a letter served to the Landlord by registered mail on September 15, 2019.

S.L. advised that the Landlord did not return the deposits in full, that he did not make an Application for Dispute Resolution to retain the deposits, and that he did not have the Tenant's written authorization to keep any amount of the deposits.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the 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 deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the

Landlord must pay double the deposits to the Tenant, pursuant to Section 38(6) of the *Act*.

When reviewing the evidence before me, the undisputed evidence is that the Tenant provided a forwarding address in writing on September 15, 2019 and that the tenancy ended on August 14, 2019. I find it important to note that Section 38 of the *Act* clearly outlines that from the later point of a forwarding address in writing being provided or from when the tenancy ends, the Landlord must either return the deposits in full **or** make an application to claim against the deposits. There is no provision in the *Act* which allows the Landlord to retain the deposits without the Tenant's written consent.

As the Tenant did not provide written authorization for the Landlord to keep any amount of the deposits, and as the Landlord did not return the deposits in full or make an Application to keep the deposits within 15 days of receiving the Tenant's forwarding address in writing, I find that the Landlord illegally withheld the deposits contrary to the requirements of Section 38 of the *Act*.

Consequently, I am satisfied that the Tenant has substantiated a monetary award amounting to double the original security deposit and pet damage deposit. Under these provisions, I grant the Tenant a monetary award in the amount of **\$2,000.00**.

S.L. continually maintained that the Landlord responded to the Tenant's forwarding address letter with a reply regarding how much he believed the Tenant owed him and that this was the Landlord's response to the Tenant's request for a return of her deposits. The Landlord's requirements to deal with the deposits pursuant to Section 38 of the *Act* were explained to her multiple times during the hearing, and despite her position that the Landlord complied with the *Act*, she repeatedly acknowledged that the Landlord neither returned the deposits in full nor made an Application through the Residential Tenancy Branch to retain the deposits. S.L. was advised to seek information from the Residential Tenancy Branch, or an advocate, on this matter as she continued to present the same argument after being explained the Landlord's obligations under the *Act* multiple times.

As the Tenant was successful in her claims, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Doubling of the security deposit	\$1,100.00
Doubling of the pet damage deposit	\$900.00
Recovery of filing fee	\$100.00
TOTAL MONETARY AWARD	\$2,100.00

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$2,100.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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: March 13, 2020

Residential Tenancy Branch