



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 or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

While the tenant and their counsel attended the hearing by way of conference call, the landlord did not. I waited until 1:40 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenant and their counsel were 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, tenant's counsel, and I were the only ones who had called into this teleconference.

The tenant provided sworn, undisputed testimony that the landlord was served with the tenant's application for dispute resolution and evidence package on October 24, 2019 by way of registered mail. In accordance with sections 88, 89, and 90 of the *Act*, I find the landlord deemed served with the tenant's application and evidence for this hearing on October 29, 2019, 5 days after mailing. The landlord did not submit any written evidence for this hearing.

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 landlord?

Background and Evidence

The tenant and their counsel provided the following sworn testimony. This month-to-month tenancy began on June 1, 2019, and ended on August 25, 2019. Monthly rent was set at \$600.00, payable on the first of every month. The tenant paid a security deposit in the amount of \$300.00, which the landlord still holds.

The tenant provided the landlord with their forwarding address by way of registered mail on September 17, 2019, but the landlord has failed to return their security deposit. The tenant did not provide written permission to the landlord to keep any portion of their security deposit, nor has the landlord filed an application to retain any portion of the security deposit.

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 tenant 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 landlord had collected a security deposit in the amount of \$300.00. I am satisfied that the tenant had provided their forwarding address to the landlord in writing. I find it undisputed that the landlord had failed to return any portion of the security deposit within 15 days of the end of this tenancy. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The tenant gave sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain any portion of the security deposit.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the original security deposit.

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

Conclusion

I allow the tenant's monetary application for the landlord's failure to comply with section 38 of the *Act*. I issue a monetary order in the amount of \$700.00 in the tenant's favour as set out in the table below.

Item	Amount
Return of Security Deposit	\$300.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	300.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$700.00

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: March 25, 2020

Residential Tenancy Branch