



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD-S-DR, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("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 its application from the landlord, pursuant to section 72.

The tenant applied through the Direct Request Process however the adjudicator made a decision that the matter was best heard through a participatory hearing and the matter was adjourned to today's date. Only the tenant appeared at the hearing. The tenant provided affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The tenant testified and supplied documentary evidence that she served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on March 18, 2020. In accordance with sections 89 and 90 of the Act, I find that the landlord was deemed served on March 23, 2020. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the Act?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The tenant's testimony is as follows. The tenancy was to begin on November 1, 2019 for a one-year fixed term ending on October 31, 2020. The tenant testified that the

monthly rent was to be \$1550.00 due on the first of each month. The tenant testified that she paid a security deposit of \$775.00 on October 26, 2019. The tenant testified that she was having mental health issues at the time and was advised by her doctor to go to Toronto. The tenant testified that on October 27, 2019 she advised the landlord that she wanted her deposit back and that she would not be moving in. The tenant testified that she gave her forwarding address to the landlord by registered mail on December 3, 2019 but has not received her deposit. The tenant testified that since she didn't move into the unit she should be entitled to the return of her deposit and because the landlord didn't return it within fifteen days, she should be entitled to double along with her filing fee.

Analysis

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

The tenant said she is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that 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.

And Section 38 (6) says 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 undisputed testimony of the tenant, the documentary evidence before me and in the absence of any disputing evidence from the landlord, I find that the landlord

has not acted in accordance with Section 38 of the Act and that the tenant is entitled to the return of double her deposits $\$775.00 \times 2 = \1550.00 .

The tenant is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The tenant has established a claim for \$1650.00. I grant the tenant an order under section 67 for the balance due of \$1650.00. This order may be filed in the Small Claims 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: April 20, 2020

Residential Tenancy Branch