



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSDS-DR, 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;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant attended. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenant provided affirmed testimony that the tenant served each of the landlords with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on March 21, 2020 and deemed received by each landlord under section 90 of the *Act* five days later, that is, on March 26, 2020.

The tenant provided the two 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 each of the landlords with the Notice of Hearing and Application for Dispute Resolution on November 18, 2019.

The landlords 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 landlords 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 landlords had been provided. (The landlords are referenced as “the landlord”).

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 the following:

- 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 on May 15, 2015 and ended on January 31, 2020. A copy of the tenancy agreement was submitted as evidence. Rent was \$973.25 monthly payable on the first of the month.

At the beginning of the tenancy, the tenant provided a security deposit of \$475.00 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 parties did a "walk through" the unit on the last day of the tenancy. The tenant handed the landlord a letter upon which was written their forwarding address. The landlord verbally acknowledged the address.

The tenant testified that the landlord returned the security deposit outside the 15-day period in an envelope postmarked February 25, 2020 which contained a cheque dated February 14, 2020 for \$475.00.

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, less the partial payment of \$475.00. The tenant requested reimbursement of the filing fee.

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 the last day of the tenancy.

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 as well as reimbursement of the filing fee, less the payment made of \$475.00 for a total monetary order of \$575.00.

A summary of the calculation of the award follows:

ITEM	AMOUNT
Security deposit	\$475.00
Doubling of security deposit - section 38(6)	\$475.00
Reimbursement of filing fee – section 72	\$100.00
(Refund)	(\$475.00)

Monetary Award	\$575.00
-----------------------	-----------------

Conclusion

I grant the tenant a monetary order pursuant to section 38 in the amount of **\$575.00** 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: April 21, 2020

Residential Tenancy Branch