



Dispute Resolution Services

Page: 1

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:

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the tenant served the landlord with his application for dispute resolution via registered mail; however, neither party could recall the dates the application was mailed or received. I find that the landlord was served with the tenant's application for dispute resolution in accordance with section 89 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in September of 2018 and ended on October 15, 2019. Monthly rent in the amount of \$1,200.00 was payable on the first day of each month. A security deposit of \$600.00 was paid by the tenant to the landlord.

The tenant testified that he sent the landlord his forwarding address in writing via registered mail on October 24, 2019. The landlord testified that she received the tenant's forwarding address in early November 2019.

Both parties agree that the landlord did not return the tenant's security deposit and did not file an application with the Residential Tenancy Branch for authority to retain any portion of the tenant's security deposit.

The tenant testified that he did not authorize the landlord to retain any portion of his deposit. This testimony was not disputed by the landlord.

The landlord testified that she did not return the tenant's security deposit due to damage to the subject rental property. The tenant denied damaging the subject rental property.

Analysis

Section 38 of the Act requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to 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 authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has

previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

Based on the testimony of both parties, I find that the landlord received the tenant's written forwarding address in early November 2019, pursuant to section 88 of the *Act*. I find that the landlord did not return the tenant's security deposit within 15 days of receiving it. I find that the tenant did not provide the landlord with written authorization to retain any portion of his security deposit. Pursuant to my above findings and section 38(6)(b) of the *Act*, I find that the tenant is entitled to a monetary award equal to double the value of his security deposit in the amount of \$1,200.00

As the tenant was successful in his application for dispute resolution, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$1,300.00

The tenant is provided with this Order 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: April 09, 2020

Residential Tenancy Branch