



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, MNSD**

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 the security deposit pursuant to section 38; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant gave evidence that they served the landlord with the hearing package by registered mail sent on December 6, 2019. The tenant provided a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find the landlord is deemed served with the tenant's materials on December 11, 2019, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a return of all or a part of the security deposit?

Is the tenant entitled to recover their filing fee from the landlord?

Background and Evidence

This periodic tenancy began in August 2018 and ended October 31, 2019. A security deposit of \$450.00 was paid at the start of the tenancy and is still held by the landlord. The tenant provided their forwarding address to the landlord in writing prior to the end of the tenancy on October 22, 2019. The tenant did not give authorization that the landlord may retain any portion of the deposit for this tenancy. No move-out inspection report was prepared.

The tenant submits that the landlord has not returned their security deposit and simply provided a letter with a list of deficiencies that the landlord has chosen to apply against the security deposit without the tenant's authorization.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit and pet damage 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 and pet damage 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 deposits as per section 38(4)(a).

I accept the evidence of the tenant that they have provided a forwarding address in writing prior to the tenancy ending on October 22, 2019. I accept the evidence that the landlord failed to return the full security deposit and pet damage deposit to the tenant within 15 days of the tenancy ending on October 31, 2019, the time frame granted under section 38 (1)(c) of the *Act* nor did the landlord make an application claiming against the security deposit and pet damage deposit during that period.

I find the landlord has no right to make a unilateral deduction from the security deposit. If the landlord had concerns arising from the condition of the rental unit, the landlord could have addressed those matters within 15 days of the end of tenancy in accordance with the *Act*. A landlord cannot decide to simply keep the damage deposits as recourse for their loss without following the legislative steps.

Furthermore, I accept the evidence of the tenant that no move-out condition inspection report was prepared.

Section 36 of the Act outlines the consequences to the parties if reporting requirements are not met. The section reads in part:

36 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

...

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find that in accordance with section 36(2)(c) of the Act, the landlord has extinguished their right to claim against the deposits for damage to the rental unit by failing to schedule and prepare a condition inspection report.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$900.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

As the tenant was successful in their application, they are entitled to recovery of the \$100.00 filing fee.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1,000.00 against the landlord. The tenant is provided with a Monetary 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 30, 2020

Residential Tenancy Branch