



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 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 of the *Act*.
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72 of the *Act*.

The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional ten minutes to allow the landlord 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 codes for the landlord had been provided.

The tenant provided affirmed testimony that she served the landlord with the Application for Dispute Resolution and evidentiary materials by registered mail sent on January 10, 2020.

The registered mailing was not collected by the landlord. The tenant affirmed that she has also forwarded emails to the landlord advising her of the hearing, but these were ignored. Pursuant to sections 88, 89 and 90 of the *Act*, I find the landlord was served with the Application for Dispute Resolution and evidentiary materials. The registered mailing is deemed received by the landlord under section 90 of the *Act*, five days after it was mailed January 10, 2020, that is, on January 15, 2020.

The tenant provided the Canada Post tracking number in support of service which is listed on the cover page of this decision.

Rule of Procedure 7.3 states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the Arbitrator may conduct the Dispute Resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. I proceeded with the hearing.

Issues to be Decided

Is the tenant entitled to the following?

- an order for the landlord to return the security deposit pursuant to section 38 of the Act?
- an order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72 of the Act?

Background and Evidence

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

The tenant testified that this tenancy began on October 1, 2018 and ended on August 31, 2019. Monthly rent in the amount of \$1,300.00 was payable each month. A written tenancy agreement was signed by the tenant. The tenant testified that she had informed the landlord that she was moving out on September 1, 2019.

The tenant affirmed that the rent was shared with another tenant, and her portion of the rent was \$650.00 per month, they each paid a security deposit of \$325.00 to the landlord which is held in Trust by the landlord.

The tenant affirmed that the landlord is refusing to pay back the security deposit as she claims the tenant did not clean properly. The tenant denied this and affirmed that she had wiped down the walls, vacuumed, cleaned and wiped all the surfaces.

The tenant testified that she sent the landlord her forwarding address via text message and email on September 18, 2019 which was their normal method of communication. On November 24, 2019, the tenant posted a letter registered mail advising the landlord of her forwarding address.

The tenant testified that the landlord has not returned the security deposit or filed an application to retain it.

The tenant affirmed that the landlord did not complete a move in condition or move out inspection report.

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. The tenant testified that she has not authorized the landlord to retain any portion of the security deposit.

Section C(3) of Residential Tenancy Branch Policy Guideline 17 states that unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing.

Based on the testimony of the tenant, I find that the landlord was served with the tenant's forwarding address in writing by email messaging on September 18, 2019 and by registered mail on November 24, 2019 which is the standard practice that the parties undertook to communicate.

I find the landlord had 15 days from when the tenant vacated the rental property or provided a forwarding address to return the security deposit to the tenant or file an application for Dispute Resolution Proceedings. Based on the evidence before me, I find that the landlord did not return the tenant's security deposit within 15 days of the receipt of the forwarding address by email on September 18, 2019 and by registered mail on November 24, 2019.

I find that the landlord did not file an application with the Residential Tenancy Branch to retain the tenant's security deposit within 15 days of receiving the tenant's forwarding address by email and in writing. Therefore, pursuant to section 38 of the *Act* and Residential Tenancy Branch Policy Guideline 17, the tenant is entitled to receive double her security deposit.

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

A summary of the calculation of the award follows:

ITEM	AMOUNT
Security deposit	\$325.00
Doubling of security deposit - section 38(6)	\$325.00
Reimbursement of filing fee – section 72	\$100.00
Total due to tenant	\$750.00

Conclusion

I grant the tenant a monetary order pursuant to section 38 in the amount of **\$750.00** 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: May 25, 2020

Residential Tenancy Branch