



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 tenants 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 MF attended on behalf of all tenants ("the tenant") and provided affirmed testimony that they served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on December 23, 2019 to the landlord's address; the documents are deemed received by the landlord under section 90 of the *Act* five days later, that is, on December 28, 2019.

The tenant provided the Canada Post Tracking Number in support of service to which I refer on the cover page. Pursuant to sections 89 and 90, I find the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution on December 28, 2019 in compliance with the *Act*.

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 fixed term tenancy agreement on May 15, 2019 which was scheduled to end November 30, 2019. A copy of the tenancy agreement was submitted as evidence. Rent was \$2,300.00 monthly payable on the first of the month.

At the beginning of the tenancy, the tenant provided a security deposit and pet deposit each in the amount of \$1,150.00 ("the deposit"). The tenant did not provide authorization to the landlord to retain any of the security deposit.

The tenant testified they provided notice of their intention to vacate the unit on November 30, 2019 by letter dated October 28, 2019. The tenant submitted a copy of the letter as evidence.

The tenant testified that the parties carried out a condition inspection on moving in and moving out which indicated no damages. A copy of the report was not submitted. The tenant testified the landlord has not claimed any damages or compensation and at the end of the tenancy promised them the full return of the deposit.

The tenant testified that the landlord returned part of the deposit outside the 15-day period in an envelope postmarked January 21, 2020 which contained a cheque dated December 3, 2019 for \$1,150.00.

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 \$1,150.00. 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 October 28, 2019.

Under these circumstances and in accordance with sections 38(6) and 72 of the *Act*, I find that the tenants are entitled to a monetary award of double the security deposit as well as reimbursement of the filing fee, less the payment made of \$1,150.00 for a total monetary order of **\$1,250.00**.

A summary of the calculation of the award follows:

ITEM	AMOUNT
Security deposit	\$1,150.00
Doubling of security deposit - section 38(6)	\$1,150.00
Reimbursement of filing fee – section 72	\$100.00
(Refund)	(\$1,150.00)
Monetary Award	\$1,250.00

Conclusion

I grant the tenant a monetary order pursuant to section 38 in the amount of **\$1,250.00** 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 22, 2020

Residential Tenancy Branch