



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

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.

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

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 12 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 code for the landlords had been provided.

The tenant provided affirmed testimony that the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on December 16, 2019 and deemed received by the landlord under section 90 of the *Act* five days later, that is, on December 21, 2019. The tenant could not locate the Canada Post Tracking Number in support of service. As the landlord filed substantial materials in response to the tenant's application, I find the landlord was served by the tenant on December 21, 2019 in accordance with the *Act*.

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.

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 November 30, 2017 and ended on November 30, 2019. No copy of the tenancy agreement was submitted as evidence. Rent was \$1,600.00 monthly payable on the first of the month.

At the beginning of the tenancy, the tenant provided a security deposit of \$700.00. The tenant did not provide authorization to the landlord to retain any of the security deposit other than \$53.33.

The tenant testified the parties did not conduct a condition inspection on moving in or moving out. The landlord did not serve a Notice of Final Opportunity.

The tenant testified he informed the landlord of his forwarding address by email dated December 3, 2019, a copy of which was submitted as evidence.

The tenant testified that the landlord returned a portion of the security deposit of \$210.00 on December 9, 2019 by bank transfer. The landlord has not returned the balance.

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 \$210.00 and the agreed upon deduction of \$53.33.

The tenant testified that the landlord has not brought an application for damages or compensation.

The tenant's claim is summarized as follows:

ITEM	AMOUNT
Security deposit	\$700.00
Security deposit - doubled	\$700.00
Less agreed upon deduction	(\$53.53)
Less partial return	(\$210.00)
TOTAL CLAIM	\$1,136.47

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 December 3, 2019.

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 less the agreed upon deduction of \$53.53 and the partial return of \$210.00.

A summary of the calculation of the award follows:

ITEM	AMOUNT
Security deposit	\$700.00
Security deposit - doubled	\$700.00
Less agreed upon deduction	(\$53.53)
Less partial return	(\$210.00)
TOTAL AWARD	\$1,136.47

I award the tenant a monetary order of **\$1,136.47**.

Conclusion

I grant the tenant a monetary order pursuant to section 38 in the amount of **\$1,136.47** as described above.

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 21, 2020

Residential Tenancy Branch