



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:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

CG ("landlords") appeared for the landlords in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlords confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlords duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of their security deposit pursuant to section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlords?

Background

Both parties confirmed that they had entered into a fixed-term tenancy beginning September 15, 2019, with monthly rent set at \$1,200.00, payable on the first of the

month. The landlords collected a security deposit in the amount of \$600.00, which the landlords still hold. The tenancy ended on October 1, 2019.

Both parties confirmed that the tenant had provided her forwarding address in writing to the landlords by way of registered mail. The tenant provided receipts, tracking numbers, and photographs of the package that was sent on November 19, 2019. The tenant also provided the confirmation of delivery with signature on November 28, 2019. The landlords confirmed that the address was the proper service address for the landlords.

Both parties confirmed that the landlords have not filed an application to retain the security deposit. The tenant testified that she did not give written authorization to allow the landlords to retain any portion of the security deposit.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the tenant provided the landlords with her forwarding address in writing, and the landlords failed to return to the tenant her security deposit in full within 15 days of receiving the tenant's forwarding address. There is no record that the landlords had applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The tenant gave sworn testimony that the landlords did not have her written authorization at the end of the tenancy to retain any portion of the tenant's security deposit.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the original security deposit. As the tenant was successful in her application, I find that the tenant is also entitled to recover the filing fee from the landlords.

Conclusion

I issue a Monetary Order in the tenant's favour under the following terms which allows the tenant to recover the portion of the security deposit retained by the landlords, plus a monetary award equivalent to the value of their security deposit as a result of the landlords'; failure to comply with the provisions of section 38 of the *Act*. The tenant is also entitled to recover the cost of the filing fee for this application.

Item	Amount
Return of Security Deposit	\$600.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	600.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$1,300.00

The tenant is provided with this Order in the above terms and the landlords must be served with a copy of this Order as soon as possible. Should the landlords 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: May 26, 2020

Residential Tenancy Branch