



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 the tenant's application pursuant to the *Residential Tenancy Act* ("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 its application from the landlord, pursuant to section 72.

This hearing dealt with an application by the tenant for a monetary order for return of double the security deposit paid to the landlord and for the return of the filing fee for the Application, under the Residential Tenancy Act (the "Act").

Only the tenant appeared at the hearing. The tenant provided affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The tenant testified and supplied documentary evidence that he served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on December 7, 2019. The tenant had provided tracking information from Canada Post indicating the mail had been signed for on November 25, 2019. I find the landlord has been duly served in accordance with the Act. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

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

Background, Evidence

The tenant's undisputed testimony is as follows. The tenancy began on May 1, 2013 and ended on October 31, 2019. The tenants were obligated to pay \$3000.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1500.00 security deposit. The tenant testified that a written condition inspection reports were not conducted at move in or move out. The tenant testified that he provided his forwarding address by registered mail on November 15, 2019. The tenant testified that the landlord returned \$1050.00 of his security deposit but retained \$450.00 without the tenants' consent. The tenant is seeking the return of double his deposit of $\$1500.00 \times 2 = \3000.00 minus the \$1050.00 already returned for an amount of \$1950.00. The tenant is also seeking the recovery of the \$100.00 filing fee for a total award of \$2050.00.

Analysis

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

The tenant said he is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In addition to the above, Residential Tenancy Policy Guideline 17.5 addresses the issue of when a portion of the deposit has been returned as follows:

The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

- *Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held. The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ($\$800 - \$275 = \525).*

Based on the undisputed testimony of the tenant, the documentary evidence before me and in the absence of any disputing evidence from the landlord, I find that the landlord has not acted in accordance with Section 38 of the Act and that the tenant is entitled to $\$1500.00 \times 2 = \3000.00 minus the \$1050.00 already returned for an amount of \$1950.00. The tenant is also entitled to the recovery of the \$100.00 filing fee for a total award of \$2050.00.

Conclusion

The tenant has established a claim for \$2050.00. I grant the tenant an order under section 67 for the balance due of \$2050.00. This order may be filed in the Small Claims 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 07, 2020

Residential Tenancy Branch