



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Exclusive Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

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 her security deposit pursuant to section 38.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 1:46 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant provided sworn, undisputed testimony that she had served the landlord with her application for dispute resolution hearing package ("Application") and evidence by way of registered mail on or about March 12, 2020. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlord was deemed served with the Application and evidence on March 17, 2020, 5 days after mailing.

Issues(s) to be Decided

Is the tenant entitled to the return of her security deposit pursuant to section 38 of the *Act*?

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

Background and Evidence

The tenant provided the following sworn, undisputed testimony as the landlord did not attend the hearing. This fixed-term tenancy began on March 1, 2019, and ended on January 31, 2020. Monthly rent was set at \$1,250.00, payable on first of every month. The landlord collected a security deposit of \$625.00 at the beginning of the tenancy.

The tenant testified that she had provided the landlord with her forwarding address upon move out. The tenant provided a copy of the Security Deposit Statement, which contained her forwarding address provided to the landlord. The tenant testified that the landlord retained \$162.50 of her deposit without her written permission, and only sent her a cheque for the remaining \$462.50 of her deposit, which the tenant has not cashed. The tenant testified that she never gave written permission for the landlord to keep any portion of her deposit, nor has the landlord filed any application to retain any portion of her 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 landlord has not returned the tenant's full security deposit within 15 days of the end of this tenancy or the provision of the tenant's forwarding address. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The tenant gave undisputed sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain any portion of her security deposit.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to the return of her original deposit, plus a monetary order equivalent to the original deposit. As the tenant has not cashed the cheque issued by the landlord, and as I am unable to confirm whether that cheque is still valid, I order that the landlord provide the tenant with a new cheque in the amount of \$1,250.00 in satisfaction of this monetary award which replaces the original cheque issued by the landlord.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1,250.00 which allows the tenant to recover the original security deposit, plus a monetary award equivalent to the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*.

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord 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: July 9, 2020

Residential Tenancy Branch