



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AMORE PROPERTIES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order for the landlord to return the security deposit, pursuant to sections 38 and 38(1) of the Act;
- an authorization to recover the filing fee for this application, pursuant to section 72 of the Act.

Both parties attended the hearing. The tenant was assisted by advocate CP. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the application, interim decision and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Issues to be Decided

Is the tenant entitled to:

1. an order for the landlord to return double the security deposit?
2. an authorization to recover the filling fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained to the attending parties it is their obligation to present the evidence, pursuant to Rule of Procedure 7.4.

Both parties agreed the periodic tenancy started on November 15, 2019 and ended on March 30, 2020. Monthly rent was \$1,000.00 due on the first day of the month. At the outset of the tenancy a security deposit of \$1,000.00 was collected and the landlord still holds it in trust. The written tenancy agreement was submitted as evidence.

Both parties also agreed the tenant's forwarding address was provided in writing on April 14, 2020. A copy of the email sent by the tenant to the landlord on April 14, 2020 containing the forwarding address was submitted into evidence.

Text messages between the parties were also submitted into evidence.

The landlord affirmed the tenant still holds the keys of the rental unit and the periodic tenancy ended on March 30, 2020 without proper notice in accordance with section 52 of the *Act*. The landlord also affirmed a full month of security deposit was asked because the tenant does not have credit history in Canada and the tenant asked the landlord to return the security deposit to his girlfriend, not the tenant.

The tenant affirmed he did not authorize the landlord to retain the security deposit.

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.

I find the landlord has not brought an application for dispute resolution claiming against the security deposit pursuant to section 38(1)(d) of the *Act*.

I accept the undisputed testimony and documentary evidence that the tenancy ended on March 30, 2020 and the tenant gave the landlord written notice of his forwarding address on April 14, 2020 and that the landlord did not return the security deposit.

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.

Residential Tenancy Branch Policy Guideline 17 states:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will

order the return of double the deposit:

- if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;

Under these circumstances and in accordance with sections 38(6) and 72 of the Act and Policy Guideline 17, I find that the tenant is entitled to a monetary award of \$2,000.00. Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit.

As the tenant's application is successful, I award the tenant the return of the filing fee.

For the purpose of educating the landlord, I note that under section 19(1) of the Act, a landlord is not permitted to accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement. Thus, the value of the security deposit accepted by the landlord was unlawful.

In summary:

ITEM	AMOUNT \$
Section 38(6) - doubling of \$1,000.00 security deposit	2,000.00
Section 72 - Reimbursement of filing fee	100.00
TOTAL	2,100.00

Conclusion

Pursuant to sections 38 and 72 of the Act, I grant the tenant a monetary order in the amount of \$2,100.00.

This order must be served on the landlord by the tenant. If the landlord fails to comply with this order the tenants 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: July 24, 2020