



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* (the *Act*) for:

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

The landlord did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing. The tenant attended and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that they served their application for dispute resolution and evidence on the landlord by registered mail sent on March 11, 2020. The tenant provided a valid Canada Post tracking receipt and information as evidence of service. Based on the evidence I find that the landlord is deemed served with the tenant's materials on March 16, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*. I note that pursuant to Residential Tenancy Policy Guideline 12 the refusal or failure of a party to pick up the registered mail does not override the deeming provision.

Issue(s) to be Decided

Is the tenant entitled to a return of all or a portion of the security deposit?
Is the tenant entitled to recover their filing fee from the landlord?

Background and Evidence

The tenant provided the following information. This tenancy began on September 1, 2019. The monthly rent was \$700.00 payable on the first of each month. A security deposit of \$350.00 was paid at the start of the tenancy. The tenancy ended on November 30, 2019. The tenant provided the landlord with their forwarding address in writing on January 8, 2020. The landlord subsequently returned \$130.00 of the security deposit to the tenant. The landlord has not returned the balance of the security deposit of \$220.00. The tenant has not provided authorization that the landlord may retain any portion of the deposit. No condition inspection report was prepared at any time for this tenancy.

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 as per section 38(4)(a).

I accept the tenant's evidence that they provided their forwarding address to the landlord by a letter dated January 8, 2020. I accept the evidence that the landlord has made partial payment but failed to return \$220.00 of the security deposit for this tenancy. I accept that the tenant has not provided written authorization that the landlord may retain any portion of the deposit.

Furthermore, I accept the evidence that no condition inspection report was prepared at any time during the tenancy. Section 36 of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if they do not comply with the requirements of section 35 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

Based on the evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within 15 days of receiving the tenant's forwarding address. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these

circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$440.00 Monetary Order, double the value of the \$220.00 portion of the security deposit withheld by the landlord.

As the tenant was successful in their application they are entitled to recover their filing fee from the landlord.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$540.00 against the landlord. The tenant is provided with a Monetary Order in the above terms and the landlord must be served with 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 7, 2020

Residential Tenancy Branch