



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38 of the *Act*.
- An order requiring the landlord to reimburse the tenant the filing fee pursuant to section 72 of the *Act*.

The tenant appeared at the hearing together with her witness and representative MM and AF. They were given the opportunity to make submissions as well as present affirmed testimony and documentary evidence.

The tenant affirmed that the landlord was served with the Application for Dispute Resolution by registered mail sent on April 21, 2020. Registered mailing is deemed received by the landlord on April 26, 2020 in accordance with sections 89 and 90 of the *Act*. The tenant's representative MM provided the Canada Post tracking number referenced on the cover page of the decision.

The landlord did not appear at the hearing. I kept the teleconference line open from the time the hearing was scheduled for an additional 15 minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant, the witness, representative and I had called into the hearing. I confirmed the correct participant code had been provided.

Rule of Procedure 7.3 states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. I proceeded with this hearing.

Issues to be Decided

Is the tenant entitled to the following?

- an order for the landlord to return the security deposit pursuant to section 38 of the Act.
- an order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72 of the Act.

Background and Evidence

While I have turned my mind to the documentary evidence and the testimonies of the tenant and witnesses, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the proceedings and my findings are set out below.

The tenant testified that this month to month tenancy began on September 1, 2019 and ended on November 30, 2019. Monthly rent in the amount of \$1,800.00 was payable on the first of each month. The tenant paid a security deposit of \$900.00 which is held in Trust by the landlord. The hydro was included in the monthly rent and a copy of the written tenancy agreement was submitted in evidence.

The witness MM affirmed they provided the landlord with the tenant's forwarding address in written correspondence to the landlord on January 3, 2020. A copy of the registered letter was submitted into evidence. The tenant affirmed that the landlord had failed to give back her security deposit and did not have her written consent to keep the security deposit. The witness AF affirmed that the tenant was also seeking the recovery of her filing fee.

The witness MM testified that the landlord failed to attend three appointments scheduled for a move out inspection. The witness and tenant affirmed that they called the landlord on November 30, 2019 to attend the move out inspection. The landlord explained that he was in Vancouver with his family and could not attend and would inspect the property himself.

The witnesses affirmed that the landlord called three days later and said “he was impressed” with the clean condition of the rental property. The witness MM affirmed that two further appointments were scheduled with the landlord in December 2019. On each occasion, the landlord ascertained he was “busy”.

The landlord complained in one of the telephone calls, that he received the hydro bill and it was too high. The landlord failed to give the tenant’s security deposit back.

Witness AF affirmed the tenant did not give permission to the landlord to retain the security deposit and the tenant is also seeking the filing fee.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant’s security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant’s provision of a forwarding address in writing. If that does not occur, the landlord is required to 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 authorization to retain all or a portion of the security deposit. The tenant testified that she has not authorized the landlord to retain any portion of the security deposit.

Section C(3) of Residential Tenancy Branch Policy Guideline 17 states that 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.

Based on the testimony of the tenant and witnesses. I find that the landlord was served with the tenant's forwarding address in writing on January 3, 2020.

I find the landlord had 15 days from when the tenant vacated the rental property or was provided a forwarding address to return the security deposit to the tenant or file an application for Dispute Resolution Proceedings.

Based on the evidence before me, I find that the landlord did not return the tenant's security deposit within 15 days of the receipt of the forwarding address on January 3, 2020.

I find that the landlord did not file an application with the Residential Tenancy Branch to retain the tenant's security deposit within 15 days of receiving the tenant's forwarding address. Therefore, pursuant to section 38 of the *Act* and Residential Tenancy Branch Policy Guideline 17, the tenant is entitled to receive double her security deposit.

As the tenant was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

A summary of the calculation of the award follows:

ITEM	AMOUNT
Security deposit	\$900.00
Doubling of security deposit - section 38(6)	\$900.00
Reimbursement of filing fee – section 72	\$100.00
Total due to tenant	\$1,900.00

Conclusion

I grant the tenant a monetary order pursuant to section 38 in the amount of **\$1,900.00** as described above.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant 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 17, 2020

Residential Tenancy Branch