



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 38.1 of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the tenant for a Monetary Order seeking the return of her security deposit.

The tenant submitted a signed “Proof of Service of the Tenant’s Notice of Direct Request Proceeding” form which declares that on August 24, 2020 the tenant served the landlord with the Notice of Direct Request Proceeding, along with copies of supporting documents, via registered mail. The tenant provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the tenant, and in accordance with sections 89 and 90 of the *Act*, I find that the landlord is deemed to have received the Direct Request Proceeding documents on August 29, 2020, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of all or a portion of her security deposit pursuant to section 38 of the *Act*? If so, should it be doubled?

Is the tenant entitled to recover the filing fee for this application from the landlord pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

On the tenant's Application for Dispute Resolution by Direct Request (the "application"), the tenant has requested a Monetary Order seeking the return of her security deposit in the amount of \$375.00.

On the application, the tenant attested that the tenancy ended on July 27, 2020, the date on which the tenant vacated the rental unit subsequent to a tenant's notice to end the tenancy.

The tenant submitted, in part, the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant, indicating a monthly rent of \$775.00, due on the first day of each month for a tenancy commencing on July 01, 2016. The tenancy agreement depicts that the tenant was required to pay a security deposit in the amount of \$400.00;
- A copy of a Tenant's Monetary Order Worksheet for an Expedited Return of Security Deposit and/or Pet Damage Deposit (the Monetary Order Worksheet) showing the amount of the security deposit paid by the tenant and the amount sought in return by the tenant. The tenant asserts that she authorized the landlord to retain a total of \$25.00 from the security deposit but did not agree to any authorized deduction from the security deposit beyond that amount, and also states that there is no authorized deduction previously granted by an arbitrator permitting the landlord to retain any amount of the security deposit. The tenant attested that she is not aware of any monetary order made against the security deposit or any monetary order for the tenant to pay an amount to the landlord that remains unpaid. The tenant stated that the landlord returned a sum of \$375.00 to the tenant; the tenant seeks the return of the balance of the security deposit, with applicable doubling provisions permitted under the Act, in the amount of \$750.00.

On the Monetary Order Worksheet, the tenant provided that she and the landlord participated in both a move-in condition inspection and a move-out condition inspection. The tenant asserted that she was not provided a copy of the condition inspection report subsequent to the move-in condition inspection, but was provided a copy of the condition inspection report after the move-out condition inspection. The tenant submitted a copy of the move-out condition inspection report as evidence.

The tenant attested that she provided her forwarding address in writing to the landlord during the move-out condition inspection held on July 27, 2020. The tenant stated that on July 27, 2020, her forwarding address was provided to the landlord by having it written on the move-out condition inspection report, dated July 27, 2020, during the move-out condition inspection.

The tenant also provided a copy of a "Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form" (Proof of Service of the Forwarding Address) which depicts that the tenant provided her forwarding address to the landlord which was written on the condition inspection report during the move-out condition inspection conducted on July 27, 2020.

The condition inspection report states that the tenant consented to the landlord retaining \$25.00 from the security deposit, and that the landlord would return the balance of the security deposit in the amount of \$375.00. On the application, the tenant states that the landlord provided payment of the \$375.00 beyond the 15-day period after the landlord had received the tenant's forwarding address in writing.

The tenant provided two copies of "Interac e-Transfer" deposit emails, both dated August 14, 2020, which depict that the landlord transferred a sum totaling \$375.00 to the tenant, which was automatically deposited to the tenant's bank account.

Analysis

I have reviewed all documentary evidence provided by the tenant. I find that in accordance with section 88 of the *Act* the landlord was duly served with the tenant's forwarding address on July 27, 2020, the date on which the tenant provided her forwarding address to the landlord by having it written on the condition inspection report during the move-out condition inspection conducted on July 27, 2020.

I accept the following declarations made by the tenant on the Monetary Order Worksheet:

- With the exception of permitting the landlord to retain \$25.00 from the security deposit, the tenant has not provided consent for the landlord to keep all or part of the balance of the security deposit of \$375.00;
- There are no outstanding Monetary Orders against the tenant for this tenancy; and
- The tenant has not extinguished her right to the security deposit in accordance with sections 24(1) and 36(1) of the *Act*.

Based on the declarations provided by the tenant, I find that the landlord did not have the tenant's written consent to retain the balance of the security deposit in the amount of \$375.00, and had consent to retain only \$25.00 from the initial amount of the security deposit.

I have reviewed all documentary evidence and I find that the tenant paid a security deposit in the amount of \$400.00 as indicated in the tenancy agreement.

I accept the tenant's statement on the Monetary Order Worksheet that the tenancy ended on July 27, 2020, the date on which the tenant vacated the rental unit.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The landlord may only keep all or a portion of the security deposit or pet damage deposit through the authority of the *Act*, such as an order from an arbitrator, or the written agreement of the tenant.

Section 38(1) of the *Act* requires the landlord to either return a tenant's security deposit and/or pet damage deposit in full or file for dispute resolution for authorization to retain the deposit(s) 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 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 and/or the pet damage deposit. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*. A landlord may also under sections 38(3) and 38(4) retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator or if the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant.

Based on the declarations provided by the tenant, I find that the rights of the tenant to seek the return of her security deposit have not been extinguished.

I find that the landlord did not adhere to the requirements of section 38(1) of the Act, as the landlord did not return the balance of the security deposit in the amount of \$375.00, as requested by the tenant, within 15 days of July 27, 2020 (the date on which the landlord received the tenant's forwarding address and the date on which the tenancy ended). I find that the landlord retained \$375.00 from the security deposit without the tenant's authorization.

There is no evidence before me to show that the landlord applied for dispute resolution claiming against the security deposit within 15 days following the conclusion of the tenancy or after receiving the tenant's forwarding address.

I find that there is no evidence before me to demonstrate that the landlord received the tenant's written authorization to retain all, or a portion of the balance of the security deposit of \$375.00 to offset damages or losses arising out of the tenancy as per section 38(4)(a) of the Act, nor did the landlord receive an order from an Arbitrator enabling it to do so.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

- (6) 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.

Pursuant to section 38(6)(b) of the Act, a landlord is required to pay a monetary award equivalent to double the value of the security deposit if a landlord does not comply with the provisions of section 38 of the Act. I find that the landlord failed to adhere to section 38(1) of the Act.

The language of section 38(6)(b) is mandatory. As the landlord has failed to comply with section 38(1), I must order that the landlord pay the tenant double the amount of the unreturned portion of the security deposit.

Residential Tenancy 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.” However, the tenant has not provided any such waiver; therefore the provisions of section 38(6)(b) must be applied.

The tenant is therefore entitled to a monetary award in the amount of \$375.00, representing a doubling of the tenant’s unreturned security deposit, less the \$375.00 already returned by the landlord [$(\$375.00 \times 2) - \375.00].

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Pursuant to sections 38, 67, and 72 of the Act , I issue a Monetary Order in the tenant’s favour in the amount of \$475.00 against the landlord, calculated as follows:

Item	Amount
Doubling of Unreturned Security Deposit ($\$375.00 \times 2$)	\$750.00
Minus amount of security deposit already returned by landlord to tenant	\$375.00
Recovery of Filing Fee	\$100.00
Total Monetary Award to Tenant	\$475.00

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(s) 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: August 31, 2020

Residential Tenancy Branch