



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNSD, MNDCT, 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 section 38 of the *Act*;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation (Regulation)* or tenancy agreement, pursuant to section 67 of the *Act*; and
- an authorization to recover the filing fee for this application, pursuant to section 72 of the *Act*.

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

The landlord confirmed receipt of the application and evidence (the materials) submitted by the tenant and that she had enough time to review the material. I find the landlord as properly served the materials in accordance with sections 88 and 89 of the *Act*.

The landlord affirmed the evidence submitted on August 31, 2020 was not served to the tenant. As the landlord's evidence was not served, I exclude it from consideration.

Issues to be Decided

Is the tenant entitled to:

- an order for the landlord to return the security deposit?
- a monetary order for compensation for loss?

- an authorization to recover the filing fee?

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 August 01, 2017 and ended in April 2020. Monthly rent was \$1,350.00 due on the first day of the month. At the outset of the tenancy a security deposit of \$650.00 and a pet damage deposit of \$650.00 were collected (the deposits). The landlord continues to hold the deposits in the total amount of \$1,300.00.

The tenant submitted into evidence an email sent to agent LI on April 11, 2020, containing her forwarding address. Agent LI replied to this email two days later. On May 04, 2020 the tenant wrote again to the agent LI:

I do not agree with a \$600 deduction from my deposit. After my tenancy ended on April 10, I provided you my forwarding address on April 11 and I still have not receive my security and pet deposits.

The landlord explained agent LI was authorized to represent her until July 15, 2020 and that agent LI did not inform her that the tenant served the forwarding address. The landlord stated she did not receive the keys, a move-out inspection did not happen because of the pandemic, and she did not try to schedule a move-out inspection.

The tenant confirmed she did not authorize the landlord to retain the deposits. The tenant affirmed she is only seeking for an order for the return of the security deposit and an authorization to recover the filing fee.

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 testimony and documentary evidence that the tenancy ended in April 2020, the tenants gave the landlord's agent written notice of their forwarding address on April 11, 2020 and that the landlord did not return the deposits.

As the landlord did not receive an authorization from the tenant or the director of the Residential Tenancy Branch to retain the balance of 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)(b) and 72 of the *Act* and Policy Guideline 17, I find that the tenant is entitled to a monetary award of \$2,700.00 (1,300.00 x 2 + 100.00). Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit.

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

In summary:

ITEM	AMOUNT \$
Section 38(6) - doubling of \$1,300.00 deposits	2,600.00
Section 72 - reimbursement of filing fee	100.00
TOTAL	2,700.00

Conclusion

Pursuant to sections 38(6)(b), 67 and 72 of the Act, I grant the tenant a monetary order in the amount of \$2,700.00.

This order must be served on the landlord by the tenant. 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: September 03, 2020

Residential Tenancy Branch