



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BALAY MANAGEMENT (CARLTON COURT MANAGEMENT) and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, RPP, 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*;
- an order for the landlord to return the tenant's personal property, pursuant to section 65;
- an authorization to recover the filing fee for this application, pursuant to section 72 of the *Act*.

Both parties attended the hearing. 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 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*

Preliminary Issue – partial withdrawal of claim

The tenant advised he is no longer seeking for an order for the landlord to return his personal property.

Therefore, pursuant to my authority under section 64(3)(c) of the *Act*, I amended the tenant's application to withdraw his claim for an order for the landlord to return the tenant's personal property.

Issues to be Decided

Is the tenant entitled to:

1. an order for the landlord to return the security deposit?
2. an authorization to recover the filing 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 April 01, 2019 and ended on July 31, 2020. Monthly rent was \$1,625.00 due on the first day of the month. At the outset of the tenancy a security deposit of \$812.50 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 July 30, 2020.

The landlord affirmed the tenant caused damages to the rental unit and that she submitted her own application for authorization to retain the security deposit. I waited for seven minutes for the landlord to contact her staff and provide the file number for this application. Both parties were not able to inform me of the file number. A third file number was informed by the tenant (file mentioned on the cover page of this decision), but that is related to another tenancy with different parties.

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.

Based on the landlord's testimony, 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 July 31, 2020, the tenant gave the landlord written notice of his forwarding address on July 30, 2020 and that the landlord did not return the security deposit.

Pursuant to section 38 of the Act, the landlord must pay a monetary award equivalent to double the value of the security deposit:

- (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
 - (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,the landlord must do one of the following:
 - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

[...]

- 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.

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 \$1,625.00. 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 filling fee.

In summary:

ITEM	AMOUNT \$
Section 38(6) - doubling of \$812.50 security deposit	1,625.00
Section 72 - Reimbursement of filing fee	100.00
TOTAL	1,725.00

Conclusion

Pursuant to sections 38 and 72 of the Act, I grant the tenant a monetary order in the amount of \$1,725.00.

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: October 05, 2020

Residential Tenancy Branch