



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

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

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of the security and pet deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The tenant's testimony is as follows. The tenancy began on May 1, 2019 and ended on May 9, 2020 with rent paid up until May 31, 2020. The tenant was obligated to pay \$1580.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$790.00 security deposit and a \$790.00 pet deposit. The tenant testified that a written condition inspection report was conducted at move in. The tenant testified that the landlord did not conduct the move out inspection report or provide a copy of it to the

tenant. The tenant testified that she provided her forwarding address on May 7, 2020 by email and left a self-addressed envelope in the unit on May 9, 2020 when she moved out. The tenant is seeking the return of double her deposits $\$790.00 + \$790.00 \times 2 = \$3160.00$. The tenant is also seeking the recovery of the \$100.00 filing fee.

The landlord gave the following testimony. The landlord testified that the tenant left some damage in the unit at move out. The landlord testified that she has had to spend an additional \$775.00 above the deposits to repair the damages that she alleges the tenant caused. The landlord testified that the tenant should not be entitled to the return of the deposits.

Analysis

It is worth noting that the landlord was hopeful that the damages she alleged could be addressed in this hearing. I explained to the parties in great detail that the landlord was at liberty to make an application for damages if she wished, the parties indicated that they understood. It was further explained this decision would only deal with the issue of the deposits, again; both parties indicated that they understood.

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant said she is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that 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.

And Section 38 (6) says 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.

The landlord confirmed that she received the tenants forwarding address on May 7, 2020 and further confirmed that she has not filed an application seeking to retain the deposit or returned any portion of the deposits to the tenant. Based on the above, the landlord's own testimony and, the documentary evidence before me, I find that the landlord has not acted in accordance with Section 38 of the Act and that the tenant is entitled to the return of double her deposits in the amount of \$3160.00. The tenant is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The tenant has established a claim for \$3260.00. I grant the tenant an order under section 67 for the balance due of \$3260.00. This order may be filed in the Small Claims 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: October 13, 2020

Residential Tenancy Branch