



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *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 this application from the landlord pursuant to section 72.

While the tenant AV attended the hearing by way of conference call, the landlord did not. I waited until 1:40 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant provided sworn, undisputed testimony that the landlord was served with the tenant's application for dispute resolution and evidence package on July 8, 2020 by way of registered mail. The tenants provided the tracking information in their evidence package. In accordance with sections 88, 89, and 90 of the *Act*, I find the landlord deemed served with the tenants' application and evidence for this hearing on July 13, 2020, 5 days after mailing. The landlord did not submit any written evidence for this hearing.

Issues(s) to be Decided

Are the tenants entitled to the return of their security deposit?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenants provided the following submissions. This month-to-month tenancy began on September 25, 2019, and ended on November 30, 2019. Monthly rent was set at \$1,100.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$500.00 for this tenancy, and only returned \$176.86 to the tenants.

The tenants provided their forwarding address to the landlord by way of registered mail to the landlord on May 25, 2020. The tenants provided the tracking information as well as proof of service in their evidentiary materials which show delivery on May 29, 2020. The tenant testified that they had never given permission for the landlord to retain any portion of their deposit, nor has the landlord filed an application to retain any portion of their deposit.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenants agree in writing the landlord may retain the amount to pay a liability or obligation of the tenants."

I am satisfied that the tenants provided sufficient evidence to support that they had provided their forwarding address in writing to the landlord on May 25, 2020. In accordance with sections 88 and 90 of the *Act*, I find the landlord deemed served with this letter on May 30, 2020, 5 days after mailing. I find that the landlord failed to return the tenants' security deposit in full within 15 days of the provision of the tenants' forwarding address. There is no record that the landlord had applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit, nor did the landlord have written permission from the tenants to retain any portion of

their security deposit. In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order for the return of the remaining \$325.14 plus a monetary award equivalent to the original value of the security deposit.

I allow the tenants to recover the filing fee for this application.

Conclusion

I allow the tenants' monetary application for the landlord's failure to comply with section 38 of the *Act*. I issue a monetary order in the amount of \$923.14 in the tenants' favour as set out in the table below.

Item	Amount
Return of Security Deposit Still Held by Landlord	\$323.14
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	500.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$923.14

The landlord(s) 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: October 27, 2020

Residential Tenancy Branch