



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 his security deposit.

The tenant submitted a signed “Proof of Service of the Tenant’s Notice of Direct Request Proceeding” form on which the tenant declares that on October 22, 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 October 27, 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 his 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 his security deposit in the amount of \$800.00.

On the application, the tenant attested that the tenancy ended on September 05, 2020, the date on which the tenant vacated the rental unit.

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 \$800.00, due on the first day of each month for a tenancy commencing on January 01, 1998. The tenancy agreement depicts that the tenant was required to pay a security deposit equivalent to half of the amount of the monthly rent of \$800.00;
- 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 asserted that he did not agree to any authorized deduction from the security deposit, and also stated 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 he 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 seeks the full return of the security deposit, and with applicable doubling provisions permitted under the Act, seeks the return of the security deposit in the sum of \$800.00. The tenant asserted that he paid a security deposit in the amount of \$400.00 to the landlord on December 15, 1997.

On the Monetary Order Worksheet, the tenant provides that he and the landlord participated in both a move-in condition inspection and a move-out condition inspection. The tenant asserted that he was not provided a copy of the condition inspection report subsequent to either the move-in condition inspection or the move-out condition inspection.

The tenant provided a copy of a letter addressed to the landlord, dated August 23, 2020, in which he provided his forwarding address in writing to the landlord and expressed that he sought the return of his security deposit. The tenant also provided his forwarding address to the landlord on a "Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit" form (Notice of Forwarding Address form).

The tenant asserted that both the August 23, 2020 letter and Notice of Forwarding Address form were served to the landlord by way of personal service via hand-delivery on August 23, 2020 in the presence of a witness identified as "SP."

Additionally, the tenant 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 served the August 23, 2020 letter containing the tenant's forwarding address, along with the Notice of Forwarding Address form, by way of personal service via hand-delivery on August 23, 2020 in the presence of a witness identified as "SP." The Proof of Service form establishes that the service was witnessed by "SP" and a signature for "SP" is included on the form.

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 August 23, 2020, the date on which the tenant personally served the landlord with the letter dated August 23, 2020 and the Notice of Forwarding Address form, both containing the tenant's forwarding address in writing.

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

- The tenant has not provided consent for the landlord to keep all or part of the security deposit;
- There are no outstanding Monetary Orders against the tenant for this tenancy; and
- The tenant has not extinguished his 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 any portion 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 September 05, 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 his 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 security deposit in full, in the amount of \$400.00, as requested by the tenant, within 15 days of September 05, 2020 (the date on which the tenancy ended after the tenant vacated the rental unit) which is the later of the dates as stated in sections 38(1)(a) and 38(1)(b) of the Act.

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 security deposit 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 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 \$800.00, representing a doubling of the tenant’s security deposit (\$400.00 x 2).

I find that there is interest payable on the security deposit. On its website, the Residential Tenancy Branch provides a Deposit Interest Calculator. With respect to a security deposit amount of \$400.00, for a tenancy encompassing the period of December 15, 1997 (the date on which the tenant provided the security deposit to the landlord) to September 05, 2020 (the date on which the tenant vacated the rental unit and the tenancy ended), the Deposit Interest Calculator indicates that interest in the amount of \$51.64 is to be added to the amount of the deposit returned to the tenant.

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 \$951.64 against the landlord, calculated as follows:

Item	Amount
Doubling of Security Deposit (\$400.00 x 2)	\$800.00
Interest added to return of security deposit	\$51.64
Recovery of Filing Fee	\$100.00
Total Monetary Award to Tenant	\$951.64

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: November 12, 2020

Residential Tenancy Branch