



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 tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

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

The landlord did not attend the hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct information. The tenant appeared and was given a full opportunity to be heard, present testimony, to make submissions and to call witnesses.

The tenant testified that they served the landlord with their application for dispute resolution and evidence by personally serving the landlord on August 30, 2020. Based on the undisputed evidence of the tenant I find the landlord duly served with the tenant's materials on August 30, 2020 in accordance with sections 88(a) and 89(1)(a) of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of their security deposit 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 and Evidence

The tenant gave undisputed testimony regarding the following facts. This periodic tenancy began in July, 2019. The tenant paid a security deposit of \$350.00 at the start of the tenancy. No condition inspection report was prepared or requested by the landlord at either the start or the end of the tenancy. No written tenancy agreement was prepared.

The tenancy ended on August 10, 2020. The tenant gave the landlord their forwarding address in writing in a letter on that same date. The tenant served the landlord with their forwarding address by posting on the rental unit door in accordance with section 88(g) of the *Act*. The tenant did not give written authorization that the landlord may retain any portion of the deposit. As of the date of the hearing, December 10, 2020, the landlord has not returned any portion of the deposit nor is the tenant aware of the landlord filing an application for authorization to retain the deposit.

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. If that does not occur, 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. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

Additionally, section 24 of the *Act* provides that if the landlord does not complete a condition inspection report in accordance with the guidelines, they extinguish their right to claim against the security deposit.

Posting a forwarding address on a rental unit door is an acceptable method of serving a document pursuant to section 88(g) of the *Act*. Pursuant to section 90(c) a document served by posting is deemed to have been received 3 days after the date of posting. Accordingly, I find that the landlord is deemed served with the forwarding address on August 13, 2020, three days after posting.

I accept the evidence of the tenant that the landlord failed to return the full security deposit to the tenant within 15 days of August 13, 2020, the time frame granted under section 38 (1)(c) of the *Act*. The landlord's right to claim against the security deposit

was extinguished by their failure to complete a condition inspection report and no claim was filed by the landlord in any event.

I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$700.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

As the tenant's application was successful the tenant is entitled to recover the \$100.00 filing fee for this application.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$800.00 against the landlord. 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 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: December 10, 2020

Residential Tenancy Branch