



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MASTREET EQUITY CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- authorization to obtain a monetary order as compensation for loss or damage under the *Act*, regulation or tenancy agreement pursuant to section 67; 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 and arguments. 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 her 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, Evidence

The tenant's testimony is as follows. The tenancy began on December 1, 2015 and ended on August 31, 2020. The tenant was obligated to pay \$985.26 per month in rent in advance and at the outset of the tenancy the tenant paid a \$437.50 security deposit and a \$200.00 pet deposit. The tenant testified that a written condition inspection report was conducted at move in and move out. The tenant testified that she provided her

forwarding address on July 27, 2020 when she gave notice that she would be ending her tenancy and again at the move out condition inspection. The tenant testified that the landlord returned her security and pet deposit on October 6, 2020; 21 days later than allowable under section 38 of the Act. The tenant seeks to obtain the return of double her deposits $\$637.50 \times 2 = \1275.00 minus what she has already received $\$637.50$ plus the $\$100.00$ filing fee for a total claim of $\$737.50$.

The landlord's agent gave the following testimony. The agent testified that it was a clerical error that the cheque wasn't sent out to the tenant within the required 15 days. The agent testified that there was no intent to withhold it and it was simply an oversight on their part and don't feel that they should have to pay the doubling portion.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the tenant, 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's agent did not dispute that the tenant provided her forwarding address at the move out inspection or that the deposits were not returned within 15 days. I accept that landlords' agent's submission that there was no malice or any intent to withhold the deposit. However, an administrative error does not relieve the landlord from their obligations or responsibilities under the *Act*. Based on the above, I find that the tenant is entitled to the return of double her deposits minus the \$637.50 she has already received. The tenant is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The tenant has established a claim for \$737.50. I grant the tenant an order under section 67 for the balance due of \$737.50. 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: January 26, 2021

Residential Tenancy Branch