



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order for the landlord to return the security deposit (the deposit), pursuant to section 38; and
- an authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing. The tenant was assisted by advocate RN. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Issues to be Decided

Is the tenant entitled to:

1. an order for the landlord to return the deposit?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained Rule of Procedure 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started in March 2015 and ended on April 25, 2020. Monthly rent was \$1,280.00 due on the first day of the month. At the outset of the tenancy a deposit of \$600.00 was collected and the landlord currently holds \$131.54.

Both parties also agreed the tenant's forwarding address was provided in writing on April 25, 2020 and the tenant did not authorize the landlord to retain \$131.54 from the deposit.

The landlord affirmed he did not return \$131.54 because the tenant did not pay utility bills. The landlord did not submit an application claiming against 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.

Based on the landlord's testimony, I find the landlord has not brought an application for dispute resolution claiming against the security deposit pursuant to section 38(1)(d) of the Act.

Pursuant to section 38 of the Act, the landlord must pay a monetary award equivalent to double the value of the security deposit:

(1) 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.

[...]

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.

Residential Tenancy Branch Policy Guideline 17 states:

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:

-if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;

-if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

[...]

The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ($\$800 - \$275 = \525).

(emphasis added)

I accept the undisputed testimony and documentary evidence that the tenancy ended on April 25, 2020, the tenant gave the landlord written notice of her forwarding address on that date and did not authorize the landlord to withhold the deposit. I further find the landlord returned \$468.46 and retained the deposit balance in the amount of \$131.54.

Under these circumstances and in accordance with sections 38(6) and 72 of the Act and Policy Guideline 17, I find the tenant is entitled to a monetary award of \$731.54. Over the period of this tenancy, no interest is payable on the landlord's retention of the deposit.

As the tenant's application is successful, I award the tenant the return of the filing fee.

In summary:

ITEM	AMOUNT \$
Section 38(6) - doubling of \$600.00 deposit	1,200.00
Minus amount returned	-468.46
Section 72 - Reimbursement of filing fee	100.00
TOTAL	831.54

Conclusion

Pursuant to sections 38 and 72 of the Act, I grant the tenant a monetary order in the amount of \$831.54.

This order must be served on the landlord by the tenant. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) to be 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 22, 2021

Residential Tenancy Branch