



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, 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, under section 72.

Both parties attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant affirmed he served the notice of hearing and evidence (the materials) by placing the package containing the materials in the landlord's mailbox on November 30, 2020. The landlord confirmed receipt of the materials and that he had time to review them.

Accordingly, I find the landlord was sufficiently served the tenant's materials, per section 71(2)(c) of the Act.

Preliminary Issue – Correction of the Landlord's Name

At the outset of the hearing the landlord corrected the spelling of his first name. Pursuant to section 64(3)(c) of the Act, I have amended the tenant's application.

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 all the evidence provided by the parties, including the documentary evidence and the testimony, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate his claims.

Both parties agreed the tenancy started on November 01, 2019 and ended on October 31, 2020. Rent was \$1,100.00 per month, due on the first day of the month. At the outset of the tenancy a deposit of \$550.00 was collected and the landlord holds it in trust.

Both parties also agreed the forwarding address was provided in writing on November 20, 2020. The tenant authorized the landlord to retain \$40.00 in a text message dated November 03, 2020: "\$550 - \$40 = \$510 to be returned to me".

The landlord stated the tenant did not clean the rental unit when the tenancy ended. 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 B: A tenant paid \$400 as a security deposit. During the tenancy, the parties agreed that the landlord use \$100 from the security deposit towards the payment of rent one month. The landlord did not return any amount. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount that remained after the reduction of the security deposit during the tenancy. In this example, the amount of the monetary order is \$600.00 (\$400 - \$100 = \$300; \$300 x 2 = \$600).

(emphasis added)

I accept the undisputed testimony that the tenancy ended on October 31, 2020, the tenant gave the landlord written notice of his forwarding address on November 20, 2020, the tenant authorized the landlord to withhold \$40.00 from the deposit and the landlord retained all the deposit.

Under these circumstances and in accordance with section 38(6) of the Act and Policy Guideline 17, I find the tenant is entitled to a monetary award of \$1,020.00. 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 \$550.00 deposit subtracted \$40.00 (510x2)	1,020.00
Section 72 - reimbursement of filing fee	100.00
TOTAL	1,120.00

Conclusion

Pursuant to sections 38(6)(b) and 72 of the Act, I grant the tenant a monetary order in the amount of \$1,120.00.

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: February 26, 2021

Residential Tenancy Branch