



Dispute Resolution Services

Page: 1

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 their security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 1:40 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant provided sworn, undisputed testimony that the landlord was served with the tenant's application for dispute resolution and evidence package on December 9, 2020 by way of registered mail. The tenant provided the tracking information in their evidence package. In accordance with sections 88, 89, and 90 of the *Act*, I find the landlord deemed served with the tenant's application and evidence for this hearing on December 14, 2020, 5 days after mailing.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of their security deposit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy originally began as a fixed-term tenancy on March 11, 2019, and ended on November 10, 2020. Monthly rent was set at \$1,900.00 per month, payable on the 11th day of each month. The landlord collected a security deposit in the amount of \$1,900.00 for this tenancy. The tenant provided a copy of the written tenancy agreement in their evidentiary materials.

The tenant provided the landlord with their forwarding address by way of registered mail on November 27, 2020, but as of the hearing date only \$700.00 of the deposit has been returned to the tenant. The tenant testified that she did not give permission for the landlord to retain the remainder of her deposit. The tenant provided the tracking information in her evidentiary materials to show the provision of her forwarding address to the landlord.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit, and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if at the end of a tenancy if the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant.

I find that the tenant provided her forwarding address to the landlord by way of registered mail. In accordance with sections 88 and 90 of the *Act*, I find the landlord deemed served with this letter on December 2, 2020. I find that the landlord has not returned the remaining \$1,200.00 of the tenant's security deposit within 15 days of being deemed served with the tenant's forwarding address. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The tenant gave sworn testimony that the landlord has not obtained their written authorization at the end of the tenancy to retain any portion of the tenant's security deposit.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to the return of the remaining portion of his security deposit (\$1,200.00), as well as compensation equivalent to the value of the original deposit (\$1,900.00) for the landlord's failure to comply with the *Act*.

As the tenant was successful with this application, I find that the tenant is also entitled to recover the filing fee from the landlord.

Conclusion

I issue a \$3,200.00 Monetary Order in the tenant's favour under the following terms which allows the tenant to recover the portion of the security deposit retained by the landlord, plus a monetary award equivalent to the value of the deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*. The tenant is also entitled to recover the cost of the filing fee for this application.

Item	Amount
Return of Remaining Security Deposit	\$1,200.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	1,900.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$3,200.00

The tenant is provided with this Order in the above terms and the landlord(s) must be served with a copy of 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: March 22, 2021

Residential Tenancy Branch