



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

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 landlord acknowledged receipt of evidence submitted by the tenant. The landlord did not submit any documentation for this hearing. 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*?

Background, Evidence

The tenant's testimony is as follows. The month to month tenancy began on June 15, 2020 and ended on August 15, 2020. The tenant was obligated to pay \$1200.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$600.00 security deposit which the landlord still holds. The tenant testified neither a move in nor move out written condition inspection report was done. The tenant testified that she

provided her forwarding address in writing to the landlord on August 19, 2020. The tenant is seeking the return of double her deposit for a total claim of \$1200.00.

The landlord gave the following testimony. The landlord testified that the tenant left the unit dirty with some minor damage. The landlord testified that the tenant's roommate didn't pay his share of the rent. The landlord confirmed that he received the tenants forwarding address. The landlord testified that he doesn't feel he should have to return the deposit with all the costs he's incurred.

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 testified that he did not file an application to retain the deposit. The landlord testified that he did not have the tenants written permission to retain the deposit. I find that the landlord has not acted in accordance with Section 38 of the Act

and that the tenant is entitled to the return of double her deposit in the amount of \$600.00 x 2 = \$1200.00.

Conclusion

The tenant has established a claim for \$1200.00. I grant the tenant an order under section 67 for the balance due of \$1200.00. 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: March 30, 2021

Residential Tenancy Branch