



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT

Introduction

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlord'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; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

While the tenant AWH attended the hearing by way of conference call, the landlord did not. I waited until 1:46 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 was clearly informed that the hearing was being recorded by the RTB, and that RTB Rules of Procedure Rule 6.11 prohibits the recording of a dispute resolution hearing by the attending parties. The tenant confirmed that they understood.

The tenant provided sworn, undisputed testimony that the landlord was served with the Notice of Hearing, and tenant's application for dispute resolution and evidence package on September 30, 2021 by way of expedited mail. The tenant provided the tracking information in their evidence package. The tenant also sent the landlord a copy by email. As per RTB Policy Guideline #12, "Registered Mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available". 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 October 5, 2021, 5 days after mailing.

Issues(s) to be Decided

Is the tenant entitled to the return of their security deposit?

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

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

The tenant testified that this tenancy began on July 16, 2016, and ended on June 30, 2021. Monthly rent was set at \$815.00, payable on the last day of the month. The landlord had collected a security deposit in the amount of \$397.50, which the landlord still holds.

The tenant testified that the landlord resided overseas, and the parties communicated through email. The tenant testified that a move-out inspection was performed by the tenant and agent, and that the tenant had later provided the landlord with a copy of the move-out inspection report which included their forwarding address by email on July 15, 2021. The tenant testified that the two parties continued to correspond by way of email through that email address after that email was sent, as shown by the emails submitted in evidence. The tenant testified that the landlord had not returned any portion of their security deposit, nor has the landlord filed for dispute resolution to keep any portion of their deposit.

The tenant is requesting the return of their security deposit less a deduction of \$22.99.

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 plus applicable interest and must pay the tenants 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, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

I am satisfied that the tenant had provided the landlord with a security deposit in the amount of \$397.50t. I am satisfied that the tenant had provided their forwarding address to the landlord by way of email. I find it undisputed that the landlord had failed to return any portion of the security deposit within 15 days of the provision of the forwarding address. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenants' security deposit. The tenant gave sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain more than \$22.99.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order for the return of their security deposit less the deduction, and a monetary award equivalent to this amount.

I allow the tenants to recover the filing fee for this application.

Conclusion

I allow the tenants' monetary application for the landlord's failure to comply with sections 38 of the *Act*. I issue a monetary order in the amount of \$849.02 in the tenants' favour as set out in the table below.

Item	Amount
Return of Security Deposit Less Deduction	\$ 374.51
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	374.51
Recovery of Filing Fee	100.00
Total Monetary Order	\$849.02

The landlord(s) must be served with 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: May 10, 2022

Residential Tenancy Branch