



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSDS-DR, 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 tenants, dealt with the tenants' 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 tenants attended the hearing by way of conference call, the landlord did not. I waited until 1:44 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenants were 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 tenants were clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing. The tenants confirmed that they understood.

The tenants provided sworn, undisputed testimony that the landlord was served with the tenants' application for dispute resolution package, including the Notice of Hearing on May 5, 2022 by way of registered mail to the landlord's address. The tenants 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 tenants' application and evidence for this hearing on May 10, 2022, 5 days after mailing. The landlord did not provide any written evidence for this hearing.

Issues(s) to be Decided

Are the tenants entitled to the return of his security deposit pursuant to section 38 of the *Act*?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenants provided the following sworn, undisputed testimony as the landlord did not attend the hearing. This month-to-month tenancy began on August 1, 2018 and ended on May 31, 2021. Monthly rent was set at \$2,000.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$1,000.00, and only returned \$650.00. The tenants provided proof of service to show that a forwarding address was provided to the landlord on June 11, 2021, which was placed in the landlord's mailbox. The tenants testified that they have not received the remaining \$350.00, nor has the landlord filed any applications to retain the remaining amount. The tenants confirmed that they had never provided the landlord with permission to keep the remaining amount.

The tenants requested the return of their security deposit plus recovery of the filing fee. The tenants also requested the return of the filing fee for their previous application, which was dismissed due to service issues.

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 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, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, despite the fact that the tenants provided their forwarding address on June 11, 2021, I find that the landlord had only returned a portion of the tenants' security

deposit. 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 tenants gave undisputed sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain any of the security deposit. In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the original security deposit less the \$650.00 returned.

As the tenants were successful in this application, I find that the tenants are also entitled to recover the filing fee from the landlord.

The tenants also requested recovery of the filing fee for their previous application. I noted that the adjudicator had already dismissed this portion of the tenants' application without leave to reapply. I therefore find that this application is *res judicata* meaning the matter has already been conclusively decided and cannot be decided again. Accordingly, the tenants are not entitled to recover the filing fee for their previous application.

Conclusion

I issue a monetary Order in the tenants' favour for the landlord's failure to comply with section 38 of the *Act*. The tenants are also allowed to recover the filing fee for this application. The tenants' application to recover the previous filing fee was previously dismissed without leave to reapply, and this matter cannot be decided again.

Item	Amount
Return of Security Deposit still held by landlord	\$350.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	1,000.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$1,450.00

The tenants are provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord 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 27, 2022