



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JUNIPER APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

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

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants attended the hearing via conference call and provided undisputed affirmed testimony. The landlords did not attend or submit any documentary evidence. The tenants provided undisputed affirmed testimony that the landlords were served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on January 5, 2016 and has provided copies of the Canada Post Customer Receipt Tracking numbers as confirmation. The tenant has also provided a copy of the returned envelope package from Canada Post which states that the landlords failed to claim the package after attempts at service were made by Canada Post. I accept the undisputed affirmed evidence of the tenants and find that the landlords were properly served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act. The landlords are deemed to have received the notice of hearing package and the submitted documentary evidence five days later as per sections 90 of the Act.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for the return of double the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenants provided undisputed testimony that a signed tenancy agreement was entered into by both parties to begin on November 15, 2015 and that a \$430.00 security deposit was paid to the landlords on October 20, 2015. The tenants stated that on November 18, 2015 the tenant's forwarding address in writing was given to the landlord via regular mail which requests the return of the tenants' security deposit. The tenants stated that as of the date of this hearing the landlord has failed to return the security deposit.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

I accept the undisputed affirmed evidence of the tenants and find that the landlord has failed to return the \$430.00 security deposit within the allowed 15 day period. The tenants have stated that as of the date of this hearing on June 10, 2016 the landlords have failed to return the security deposit. On this basis, I find that the tenants have established a claim for the return of the original \$430.00 security deposit and pursuant to section 38 (6) has established claim for the return of an amount equal to the \$430.00 security deposit for failing to comply with the Act.

The tenants having been successful in their application are entitled to recovery of the \$50.00 filing fee.

Conclusion

I issue a monetary order in the tenants' favour under the following terms which allows the tenants to recover their original security deposit plus a monetary award equivalent to the value of their security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the Act:

Item	Amount
Return of Security Deposit	\$430.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the Act	430.00
Recovery of Filing Fee	50.00
Total Monetary Order	\$910.00

The tenants are provided with these orders in the above terms and the landlord(s) must be served with a copy of these orders as soon as possible. Should the landlord(s) fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders 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: June 10, 2016

Residential Tenancy Branch