



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by both tenants.

The tenants testified each landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on January 3, 2016 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

Based on the testimony of the tenants, I find that each landlord has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The tenants testified the tenancy began in September 2013 as a 1 year fixed term tenancy that converted to a month tenancy on September 1, 2014 for a monthly rent, at the end of the tenancy, of \$1,120.00 with a security deposit of \$550.00 paid. The tenancy ended on November 30, 2015.

The tenants submitted that they provided their forwarding address to the landlord on the day the move out condition inspection was completed and it was written on the Condition Inspection Report. The tenants acknowledged they had agreed in writing that the landlord could deduct \$178.48 from the security deposit for outstanding hydro charges.

The tenants acknowledged that they received from the landlord in early January 2016 a cheque made in the amount of \$371.00, less than the agreed upon amount to be returned. The tenants stated that the cheque was made payable to the male tenant but only used his first name.

The tenants provided copies of their text messages to the landlord asking to have the cheque re-written with the male tenant's full name. They confirmed that they did receive a replacement cheque, sometime after January 10, 2016. The tenants testified that both cheques were dated December 7, 2015.

The tenants stated that they had not cashed the cheque on the advice of the Residential Tenancy Branch.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit, less any mutually agreed upon amounts or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

In the case before me I find the landlord had until December 15, 2016 to either return security deposit less the agreed upon deduction of \$178.48 or file an Application for Dispute Resolution seeking to claim against the deposit.

However, I accept the tenants' undisputed testimony that the landlord returned only \$371.00 by cheque that was received in January 2016. As such, I find the landlord has failed to comply with the requirement under Section 38(1) to do so within 15 days of the end the tenancy and receipt of the forwarding address.

I also find that the landlord withheld an additional \$0.52. As a result, I find the landlord withheld more than the parties had agreed to do without any authority to do so. Therefore, I find the tenants are entitled to return of double the amount of the entire \$550.00 security deposit, pursuant to Section 38(6).

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$971.52** comprised of \$921.52 double the amount of the security deposit less the amount agreed upon of \$178.48 and the \$50.00 fee paid by the tenants for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

I note that the tenants still have the cheque dated December 7, 2015 in the amount of \$371.00. Should the tenants be successful in cashing this cheque then the \$371.00 must be applied to the above noted award of \$971.52 in partial satisfaction of that order.

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: July 26, 2016

Residential Tenancy Branch