



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenants on March 21, 2016. The Tenants filed seeking a monetary order for the return of double their security and pet deposits and to recover the cost of their filing fee.

The hearing was conducted via teleconference and was attended by the male Tenant who provided affirmed testimony that he would be representing both Tenants in this matter. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

No one was in attendance on behalf of the Landlords. The Tenant testified the Landlords were served copies of their application for Dispute Resolution, notice of hearing documents, and their evidence, via registered mail on March 21, 2016.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail.

Based on the undisputed evidence of the Tenant, I find the Landlords were deemed served notice of this proceeding on March 26, 2016, five days after they were mailed, pursuant to section 90 of the *Act*. Accordingly, I continued to hear the undisputed evidence of the Tenants in absence of the Landlords.

Issue(s) to be Decided

Have the Tenants proven entitlement to a Monetary Order?

Background and Evidence

The Tenants entered into a written one year fixed term tenancy that began on February 1, 2015 and ended on January 31, 2016. Rent of \$2,000.00 was payable on or before the first of each month. On January 18, 2015 the Tenants paid a security deposit of

\$1,000.00 plus \$500.00 as the pet deposit. A move in condition report was completed at move in and at move out.

The Tenants vacated the property as of January 31, 2016 and provided their Landlords with their forwarding address in writing via email on February 2, 2016.

The Tenant testified the Landlords continued to stall in the return of their deposit. He stated that after they served the Landlords with notice of their application on March 21, 2016, the Landlords sent them a \$1,500.00 email money transfer on March 30, 2016.

In support of their application, the Tenants submitted documentary evidence which included copies of: various emails between the parties and the tenancy agreement.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

Section 67 of the Residential Tenancy Act states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The tenancy ended January 31, 2016, as noted above, and the Landlords received the Tenants' forwarding address on February 2, 2016. Therefore, the Landlords were required to return the Tenants' security and pet deposits in full or file for dispute resolution no later than February 17, 2016.

In this case, the Landlords failed to return the deposits within the required 15 day timeframe. Rather, the \$1,500.00 deposits were not returned to the Tenants until March 30, 2016, 57 days after the Landlords were in receipt of the Tenants' forwarding address.

Based on the aforementioned, I find, pursuant to section 62 of the *Act*, the Landlords have failed to comply with Section 38(1) of the *Act* and the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposits and the landlord must pay the tenant double the security deposit.

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$1,000.00 security deposit and \$500.00 pet deposit since January 18, 2015.

Based on the above, I find that the Tenants have succeeded in proving the merits of their claim, and I award them double their security and pet deposits less the March 30, 2016 payment in the amount of **\$1,500.00** (2 x \$1,000.00 + 2 x \$500.00 - \$1,500.00).

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Tenants have succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the Act.

Accordingly, I Order the Landlords to pay the Tenants the sum of **\$1,600.00** (\$1,500.00 + \$100.00) forthwith, pursuant to section 67 of the *Act*.

The Tenants have been issued a Monetary Order for **\$1,600.00**. This Order must be served upon the Landlords and may be enforced through Small Claims Court.

Conclusion

The Tenants were successful with their application and were granted a \$1,600.00 monetary award.

This decision is final, legally binding, and 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 29, 2016

Residential Tenancy Branch