



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 pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 16 minutes. Both tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. "Tenant BB" confirmed that her husband, tenant FB ("tenant"), had authority to speak on her behalf as an agent at this hearing.

The tenant testified that the landlord was served with the tenants' application for dispute resolution hearing package ("Application") on February 23, 2016, by way of registered mail. The tenants provided a Canada Post receipt and tracking number with their Application. The tenant confirmed that although the tenants' Application was filed on December 29, 2015, the Residential Tenancy Branch ("RTB") lost the Application. The tenant said that he made inquiries and when the Application was finally found, a notice of hearing, dated February 22, 2016, was generated and provided to the tenants. I find that the above administrative error at the RTB was outside of the control of the tenants and that the tenants served the landlord with their Application within 3 days of receiving the hearing notice, as required by section 59(3) of the *Act*. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's Application on February 28, 2016, five days after its registered mailing.

Issues to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of the security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

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

Background and Evidence

The tenant testified regarding the following facts. This tenancy began on October 1, 2013 and ended on August 27, 2015. Monthly rent in the amount of \$1,900.00 was payable on the first day of each month. A security deposit of \$950.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing.

The tenant testified that no move-in or move-out condition inspection reports were completed for this tenancy. The tenant said that a written forwarding address was provided by the tenants to the landlord by way of a letter, dated August 27, 2015. The tenant provided a copy of this letter and said it was sent by way of registered mail on August 27, 2015. The tenant explained that the landlord did not have written permission to keep any amount from the tenants' security deposit. The tenant confirmed that the tenants did not receive an application for dispute resolution from the landlord to retain any amount from the security deposit.

The tenants seek a return of double the amount of their security deposit, totalling \$1,900.00. The tenants also seek to recover the \$50.00 filing fee paid for this Application. The tenant stated that the tenants had originally applied for \$2,000.00 in error and that they were only seeking \$1,950.00 total including the filing fee.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the undisputed testimony of the tenant. The tenancy ended on August 27, 2015. The tenant provided a written forwarding address to the landlord by way of a letter sent by registered mail on August 27, 2015. I find that the landlord was deemed served with this letter on September 1, 2015, five days after its registered mailing. The tenants did not give the landlord written permission to retain any amount from their security deposit. The landlord did not return the deposit or make an application for dispute resolution to claim against the deposit.

The landlord continues to hold the tenants' security deposit of \$950.00. Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit. In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive double the value of their security deposit, totalling \$1,900.00, from the landlord.

As the tenants were successful in this Application, I find that they are entitled to recover the \$50.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$1,950.00 against the landlord. The tenant(s) are provided with a monetary order in the above terms and the landlord must be served with 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: October 06, 2016

Residential Tenancy Branch