



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

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

- authorization to obtain a return of all or a portion 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 tenants testified that on June 22, 2016 they forwarded the tenants' application for dispute resolution hearing package via registered mail to the landlord. The tenants provided a Canada Post receipt and tracking number as proof of service. Based on the testimony of the tenants and in accordance with sections 89 and 90 of the *Act*, I find that the landlord has been deemed served with the application on June 27, 2016, the fifth day after its registered mailing.

The tenants testified that on August 2, 2016 they forwarded an amendment to include a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67 via registered mail to the landlord. The tenants provided a Canada Post receipt and tracking number as proof of service. Based on the testimony of the tenants and in accordance with sections 89 and 90 of the *Act*, I find that the landlord has been deemed served with the amendment on August 7, 2016, the fifth day after its registered mailing.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants authorized to obtain a return of all or a portion of their security deposit?

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

Background and Evidence

As per the testimony of the tenants, the tenancy began on August 1, 2014 on a month-to-month basis. Rent in the amount of \$1,500.00 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$725.00 at the start of the tenancy.

After paying May rent, the tenants received the landlord's 2 Month Notice dated May 2, 2016, with an effective date of July 1, 2016. This 2 Month Notice indicates the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse.

On May 13, 2016 the tenants provided the landlord with written notice to end the tenancy effective May 31, 2016. The tenants vacated the rental unit on May 31, 2016. The tenants seek the return of their security deposit and reimbursement of May rent.

Analysis

Security Deposit

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit. Tenants may waive their right to the return of the security deposit through written authorization to the landlord. In the absence of written authorization from the tenants, the landlord must return the security deposit or file an application within fifteen days. Should the landlord fail to do this, the landlord must pay the tenants double the amount of the security deposit.

Based on the undisputed testimony of the tenants, the landlord received the forwarding address on May 13, 2016. The landlord did not file an arbitration application to retain the deposit, the landlord did not return the full deposit and the landlord did not receive written authorization to retain it. Based on this, I find the tenants are entitled to double the value of their security deposit in the amount of **\$1,450.00**.

Rent

Section 50 of the *Act* permits tenants, who have received a 2 Month Notice, to give the landlord at least ten days' notice to end the tenancy earlier than the intended effective date of the landlord's notice. By giving this notice, the tenants do not lose their right to compensation equivalent to one month's rent under the tenancy agreement, as required by section 51 of the *Act*.

I find the tenants complied with the *Act* and issued a valid notice effective May 31, 2016 pursuant to section 50 of the *Act*. In accordance with section 51 of the *Act*, I find the tenants are entitled to compensation equivalent to one month's rent in the amount of **\$1,500.00**.

As the tenants were successful in this application, I find that the tenants are entitled to recover the **\$100.00** filing fee paid for the application, for a total award of **\$3,050.00**.

Conclusion

I issue a monetary order in the tenants favour in the amount of **\$3,050.00** against the landlord.

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: December 13, 2016

Residential Tenancy Branch