



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

On September 13, 2016, the Tenants submitted an Application for Dispute Resolution for the Landlord to return of all or part of the pet damage deposit or security deposit, and to recover the filing fee for the Application.

The Tenant appeared at the hearing; however, the Landlord did not. The Tenant provided affirmed testimony that she served the Landlord with the Notice of Hearing using Canada Post Registered Mail on September 15, 2016. The Tenant provided a copy of the Registered Mail tracking information as proof of service. The tracking information indicates that on September 21, 2016, the registered mail was refused by the recipient and was returned to the sender. I find that that the Notice of Hearing was served to the Landlord in accordance with sections 89 and 90 of the Act and the Notice of Hearing is deemed to have been received by the Landlord.

The hearing process was explained and the Tenant was asked if she had any questions. The Tenant provided affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Tenants entitled to the return of double the security deposit?
- Are the Tenants entitled to recover the cost of the filing fee?

Background and Evidence

The Tenant testified that the tenancy commenced on August 1, 2015, as a 1 year fixed term tenancy. Rent in the amount of \$1,300.00 was due on the first day of each month. The Tenants paid the Landlord a security deposit of \$650.00.

The Tenants moved out of the rental unit on July 30, 2016.

The Tenant testified that the Landlord gave her a cheque for the security deposit on March 30, 2016, but put a stop payment on the cheque. The Tenants testified that the Landlord has not returned the security deposit.

The Tenant testified that there was no agreement that the Landlords could retain any amount of the security deposit.

The Tenant testified that the Tenants provided the Landlord with their forwarding address in writing on two occasions. The Tenant testified that their forwarding address was provided to the Landlord via email on August 8, 2016, and again by regular mail on August 15, 2016. The Tenant provided documentary evidence of the email and letter sent to the Landlord.

Analysis

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

I find that the Tenants provided their forwarding address to the Landlord on August 15, 2016. There is no evidence before me that the Landlord applied for dispute resolution within 15 days of receiving the Tenants' forwarding address. I also find that there was no agreement from the Tenants that the Landlord could retain the security deposit.

I find that the Landlord failed to return the security deposit within 15 days of receiving the Tenants' forwarding address and therefore the Landlord breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlord must pay the Tenants double the amount of the security deposit.

I order the Landlord to pay the Tenants the amount of \$1,300.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant's paid to make application for dispute resolution.

I grant the Tenants a monetary order in the amount of \$1,400.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlords failed to return the security deposit to the Tenants in accordance with the legislation.

The Tenants are granted double the amount of the security deposit. I grant the Tenants a monetary order in the amount of \$1,400.00.

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: March 13, 2017

Residential Tenancy Branch