



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 tenant's 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 landlords did not attend this hearing which lasted approximately 10 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that she served the application for dispute resolution dated February 21, 2017 on the landlords, at the landlords' address for service provided on the tenancy agreement, by registered mail on February 24, 2017. The tenant provided two Canada Post tracking numbers as evidence of service. Pursuant to sections 89 and 90 of the *Act* I find that the landlords were deemed served with the tenant's application for dispute resolution on March 1, 2017, five days after mailing.

Issue(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

The tenant provided undisputed testimony on the following facts. This tenancy began on April 1, 2014 and ended January 25, 2017. The monthly rent at the end of the tenancy was \$799.00. A security deposit of \$425.00 and a pet damage deposit of \$375.00 was paid by the tenant at the start of the tenancy and is still held by the landlords.

The tenant testified that she participated in a condition inspection report of the rental unit at both the start and end of the tenancy. The tenant submitted a copy of the condition inspection report into written evidence showing that the parties agreed that there were no issues with the rental unit. The tenant said that she has not provided written authorization that the landlords may keep any portion of the security deposit.

The tenant testified that a forwarding address was provided to the landlords in writing on January 25, 2017. The tenant testified that the landlords did not provide her with the full security deposit and pet damage deposit until February 20, 2017. She said that the cheque the landlords provided on that date misspelled her name and she was therefore, unable to cash the cheque. The tenant said that she has attempted to contact the landlords to have a corrected cheque issued but has not received any response to date.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit and pet damage deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit and pet damage deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I find that the tenant provided written notice of the forwarding address on January 25, 2017. I accept the tenant's evidence that the landlords failed to return the full deposit to the tenant within 15 days of January 25, 2017, the time frame granted under section 38 (1)(c) of the *Act* nor did the landlords make an application claiming against the deposit during that period. I accept the tenant's evidence that the cheque received from the landlords cannot be used because of the misspelling of the tenant's name.

Based on the undisputed evidence before me, I find that the landlords have neither applied for dispute resolution nor returned the tenant's security deposit and pet damage

deposit in full within the required 15 days. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a \$1,600.00 Monetary Order, double the value of the security deposit and pet damage deposit paid for this tenancy. No interest is payable over this period.

As the tenant was successful in their application, they are entitled to recovery of the \$100.00 filing fee.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1,700.00 against the landlords. The tenant is provided with a Monetary Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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: April 18, 2017

Residential Tenancy Branch