



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the return of the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlords did not attend the hearing. The Tenant states that on January 20, 2017 each Landlord was served with the application for dispute resolution and notice of hearing (the “Materials”) by express post mail that required a signature. The Tenant states that she believes the addressee of the mail is required to sign for receipt of such mail. The Tenant states that the Landlord confirmed receipt of the Materials in a letter mailed to the Tenants in February 2017.

Section 89 of the Act provides that for service by mail of an application for dispute resolution such service must be by registered mail. Section 71(2) of the Act provides that a document not served in accordance with section 88 or 89 may be found to be sufficiently given or served for purposes of this Act. Given the Tenant’s evidence that the receipt of the Materials was delivered with the requirement of a signature and considering the Tenant’s evidence of the Landlords written acknowledgement of receipt of the application and notice of hearing, I find that the application for dispute resolution was sufficiently served for the purposes of the Act. The Tenants were given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Tenants entitled to return of double the security deposit?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The tenancy first started on November 1, 2014 for a fixed term. A second tenancy started on November 1, 2015 for another fixed term. The tenancy ended by mutual agreement on December 31, 2016. Rent of \$2,300.00 was payable throughout both tenancies. At the outset of the first tenancy the Landlord collected \$1,150.00 as a security deposit and \$500.00 as a pet deposit. These deposits were carried over for the second tenancy. The Parties conducted a move-in inspection with completed report copied to the Tenants at the outset of the first tenancy agreement. The Parties mutually conducted a move-out inspection with a completed report copied to the Tenants at the end of the tenancy. The Tenant provided its forwarding address by writing their forwarding address on the back of the Landlord's copy of the move-out inspection report completed December 31, 2016. The Landlord has not returned the security or pet deposit and has not made an application claiming against the deposits. The Tenants claim return of the security deposit and do not waive any entitlement to return of double the security deposit. It is noted, although not raised at the hearing, that the Tenants also appear to claim the costs of photos, printing and copying of evidence.

Analysis

Section 38 of the Act provides 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 the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Based on the undisputed evidence of the security and pet deposit and considering that the Landlord has not made any application to claim against the security deposit by making an application for dispute resolution, I find that the Landlords must now return double the combined pet and security deposit plus zero interest of **\$3,300.00** (1,650.00 x 2).

As there are no provisions under the Act for recovering evidence costs, I dismiss this claim. As the Tenants have been otherwise successful with their application I find that the Tenants are also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$3,400.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$3,400.00**. If necessary, this order may be filed in the Small Claims 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: June 26, 2017

Residential Tenancy Branch