



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This is a reconvened hearing in which an adjournment was granted to allow the tenant to serve the landlord via substitute means with the notice of hearing package and any documentary evidence to the landlord's son via Canada Post Registered Mail.

The tenant has applied for pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence. The tenant provided testimony that the landlord was served as per the substitute service order via the landlord's son via Canada Post Registered Mail on May 25, 2017 and has provided the Canada Post Customer Receipt Tracking number as confirmation of service (noted on the cover page of this decision). The tenant also stated that she received a confirmation text from the landlord's son confirming receipt of the package. I accept the undisputed affirmed evidence of the tenant and find that the landlord has been sufficiently served with the notice of hearing package and the submitted documentary evidence as per section 90 of the Act.

Issue(s) to be Decided

Is the tenant entitled to an order for return of double the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant provided evidence that this tenancy began on May 6, 2016 on a month-to-month basis. The monthly rent was \$1,025.00 payable on the 1st day of each month. A security deposit of \$512.50 and a pet damage deposit of \$512.50 were paid.

The tenant seeks a monetary claim of \$1,125.00 which consists of:

\$562.50 Return of Security and Pet Deposits

\$562.50 Compensation, Sec. 38(6) Failing to comply

The tenant has clarified that the landlord had returned \$462.50 of the combined security and pet deposits leaving an owed balance of \$562.50 that was not returned. The tenant stated that the tenancy ended on December 31, 2016 after providing notice to end the tenancy to the landlord. The tenant also stated that the landlord was provided her forwarding address in writing in an email and again on the condition inspection report for the move-out on January 1, 2017.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

I accept the undisputed affirmed evidence of the tenant and find that the landlord has failed to return the remaining balance of \$562.50 of the combined security and pet damage deposits. I also accept that the tenant provided her forwarding address in writing to the landlord on January 1, 2017 on the condition inspection report for the move-out.

I find that the tenant has established a claim for return of the \$562.50 balance for the combined security and pet damage deposits.

I also find that the landlord has failed to comply with section 38(1) of the Act by returning the security and pet damage deposits in full within the allowed timeframe and is liable under section 38(6) to an amount equal to the unreturned amount of \$562.50 for the combined security and pet damage deposits.

The tenant has established a total claim of \$1,125.00.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$1,225.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the 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: July 07, 2017

Residential Tenancy Branch