



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT

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 landlord did not attend this hearing which lasted 10 minutes. The tenants attended and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenants testified that the application for dispute resolution and all evidentiary materials were served on the landlord by registered mail sent on September 11, 2017. The tenant submitted a CanadaPost tracking number as evidence in support of service. Pursuant to sections 88, 89 and 90 of the *Act*, I find that the tenants' application package was deemed served on the landlord on September 16, 2017, five days after mailing.

Issue(s) to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to recover the filing fee of this application from the landlord?

Background and Evidence

The tenants gave undisputed evidence regarding the following facts. This tenancy began in November, 2015 and ended in July, 2017. A security deposit of \$775.00 was paid at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at either the start or the end of the tenancy.

The tenant emailed their forwarding address to the landlord on August 4, 2017. They also sent the landlord a copy of their forwarding address by registered mail sent on the same date. A copy of the email correspondence and Canada Post tracking information for the forwarding address was entered into evidence.

The tenants have not provided written authorization that the landlord may retain any portion of the \$775.00 security deposit.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security 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. 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 accept the undisputed evidence of the tenants that the landlords were given written notice of a forwarding address on August 4, 2017. I accept the undisputed evidence of the tenants that the landlord did not return the security deposit, did not make an application for authorization to retain the security deposit nor did they have written authorization from the tenants that they may retain any portion of the security deposit.

In addition, the tenants testified that no condition inspection report was prepared at the start of the tenancy. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

...

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Accordingly, I also find that the landlord has extinguished any right to claim against the security deposit by failing to prepare a condition inspection report at the start of the tenancy.

Based on the undisputed evidence before me, I find that the landlord has not filed an application to retain the security deposit within the 15 day time limit and has failed to return the tenants' security deposit in full. I accept the tenants' 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 tenants are entitled to a \$1,550.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

As the tenants' application was successful I also find that they are entitled to recover the \$100.00 filing fee for this application.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$1,650.00 against the landlord. The tenants are provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: March 29, 2018

Residential Tenancy Branch