



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 tenants' filing fee for this application from the landlord pursuant to Section 72.

The tenants both attended the hearing conducted by teleconference and were given a full opportunity to submit evidence, provide testimony and call witnesses. The landlord did not appear at the hearing although I kept the teleconference line open from the time the hearing was scheduled at 1:30 PM until 1:43 PM to allow the landlord the opportunity to call. The teleconference system indicated only the tenants and I had called into the hearing. I confirmed the correct participant code for the landlord to participate in the hearing had been provided to him.

The tenants testified they served the landlord with the Notice of Hearing and their supporting documents by registered mail on December 23, 2017. The tenants submitted a Canada Post tracking number as evidence in support of service.

Section 90 of the *Act* provides notice by registered mail is deemed to take place on the 5th day after mailing. Accordingly, pursuant to Sections 89 and 90 of the *Act*, I find the landlord was served with the Notice of Hearing and supporting documents on December 28, 2017.

Issue(s) to be Decided

1. Are the tenants entitled to a monetary award equivalent to double the value of their security deposit because of the landlord's failure to comply with Section 38 of the *Act*?

2. Are the tenants entitled to reimbursement of their filing fee pursuant to Section 72 of the *Act*?

Background and Evidence

The tenants submitted a copy of a residential tenancy agreement with the landlord commencing January 15, 2016. Rent was \$1,200.00 a month payable on the first of the month. The tenants testified they submitted a security deposit to the landlord at the beginning of the tenancy in the amount of \$600.00. The tenants vacated the premises on December 31, 2016 upon providing one month's notice to the landlord.

The tenants requested the return of the security deposit and provided their forwarding address by registered mail sent to the landlord on September 27, 2017. The landlord has not returned the security deposit and the tenants have not provided written authorization that the landlord may retain any portion of the \$600.00 security deposit.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenants' 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 tenants' 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 find at no time has the landlord brought any proceedings with respect to nonpayment of rent or other damages nor has he brought an application for dispute resolution claiming against the security deposit pursuant to Section 38(1)(d) of the *Act*.

I accept the tenants' evidence they have not waived their right to obtain a payment pursuant to Section 38 of the *Act* and the landlord was given written notice of a forwarding address on September 27, 2017.

In addition, the tenants testified no condition inspection report was prepared at the end 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 the landlord has extinguished any right to claim against the security deposit for damage to the rental unit by failing to prepare a condition inspection report at the end of the tenancy.

Under these circumstances and in accordance with Section 38(6) of the *Act*, I find the tenants are entitled to a Monetary Order in the amount of \$1,200.00, 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 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 \$1,300 against the landlord.

The tenant is 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: June 12, 2018

Residential Tenancy Branch