



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A participatory hearing was held, via teleconference, on July 26, 2018. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- An order that the Landlord return all or part of the security deposit or pet damage deposit

One of the Tenants attended the teleconference hearing; however, the Landlord did not. The Tenant testified that he served the Landlord with his application and evidence by registered mail on July 3, 2018. Pursuant to section 88 and 90 of the Act, I find the Landlord is deemed to have received this package on July 8, 2018, the fifth day after its registered mailing. The Tenant stated he waited to serve this package because the Landlord made it seem like he was going to get his deposit back. However, this never happened.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

Background and Evidence

The Tenant stated that he vacated the rental unit on September 7, 2016. The Tenant stated that the Landlord still holds a security deposit in the amount of \$650.00, and refuses to return it. The Tenant stated that he sent his forwarding address in writing to the Landlord by registered mail on October 19, 2016. The Tenant stated that he continued to get empty promises and the Landlord failed to give him anything back.

The Tenant stated that he is looking for double the security deposit because the Landlord failed to return the original deposit within 15 days of getting his forwarding address in writing. The Tenant stated it took him so long to apply because he kept getting empty promises from the Landlord and was trying to avoid having to come to the tenancy branch for a hearing.

Analysis

Based on the undisputed documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, the Tenants moved out of the rental unit on September 7, 2016, which I find reflects the end of the tenancy. The Tenant sent his forwarding address in writing, by registered mail, on October 19, 2016. Pursuant to section 88 and 90 of the *Act*, I find the Landlord is deemed served with the Tenants' forwarding address in writing on October 24, 2016, the fifth day after its registered mailing. There is no evidence to suggest that either party extinguished their right to the security deposit.

Pursuant to section 38(1) of the Act, the Landlord had 15 days from receipt of the forwarding address in writing (until November 8, 2016) to either repay the security deposit (in full) to the Tenants or make a claim against it by filing an application for dispute resolution. There is no evidence the Landlord did either and I find the Landlord breached section 38(1) of the Act.

Accordingly, as per section 38(6)(b) of the Act, I find the Tenants are entitled to recover double the amount of the security deposit (\$650.00 x 2). Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenants paid to make the application for dispute resolution.

In summary, I issued the Tenant a monetary order for \$1,400.00 based on the Landlord's failure to deal with the security deposit in accordance with section 38 of the *Act*.

Conclusion

I grant the Tenants a monetary order in the amount of **\$1,400.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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 26, 2018

Residential Tenancy Branch