



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On March 26, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for the Landlord to return of all or part of the pet damage deposit or security deposit, and to recover the filing fee for the Application.

This matter was set for hearing by telephone conference call at 1:30 pm on this date. The Tenant appeared at the hearing; however, the Landlord did not.

The Tenant testified that the Landlord never provided a physical address for service of tenancy related documents during the tenancy. The Landlord lives in the United States and the parties communicated using email, texting, and telephone.

The Tenant testified that he obtained the Landlord’s physical address from a relative of the Landlord. The Tenant testified that he sent the Notice of Dispute Resolution Proceeding to the Landlord using Canada Post registered mail on March 28, 2018.

The Tenant testified that he sent the Landlord an email dated April 10, 2018, which contained a copy of the Notice of Dispute Resolution Proceeding and a request for the Landlord to return the security deposit and pet damage deposit. The Tenant provided copy of the email he sent the Landlord.

The Tenant testified that the Landlord responded to the April 10, 2018, email later the same day. The Tenant provided a copy of an email he received from the Landlord on April 10, 2018.

Section 13 of the Act requires a Landlord to prepare a tenancy agreement which must comply with any requirements prescribed in the regulations and must set out the address for service and telephone number of the Landlord or the Landlord's agent.

I find that that the Landlord failed to provide the Tenants with a physical address for service of documents. I find that the parties communicated extensively using email. Pursuant to section 71 of the Act, I find that the Notice of Dispute Resolution Proceeding was sufficiently served to the Landlord for the purposes of the Act on April 10, 2018 using email.

The Tenant provided affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and make submissions to me.

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.

Issues to be Decided

- Are the Tenants entitled to the return of double the security deposit?
- Are the Tenants entitled to recover the cost of the filing fee?

Background and Evidence

The Tenant testified that the tenancy began in the fall of 2015, as a one year fixed term tenancy that continued thereafter on a month to month basis until February 28, 2018. Rent in the amount of \$3,500.00 was due by the first day of each month. The Tenants paid the Landlord a security deposit of \$1,750.00 and a pet damage deposit of \$1,750.00.

The Tenant testified that the Landlord did not return the security deposit or pet damage deposit within 15 days of receiving the Tenants forwarding address in writing.

The Tenant testified that there was no agreement that the Landlord could retain any amount of the security deposit or pet damage deposit.

The Tenant testified that the Tenants provided the Landlord with their forwarding address in writing using email on March 2, 2018. The Tenant testified that the Landlord responded to the email. The Tenant provided a copy of the March 2, 2018 email and response from the Landlord.

The Tenant testified that the Landlord returned \$3,500.00 to them using e-transfer sometime in June 2018.

The Tenant is seeking an additional amount of \$3,500.00 because the Landlord failed to return the deposit in accordance with section 38 of the Act.

Analysis

Section 38 (1) of the Act states 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 any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

I find that the Tenants served the Landlord the Notice of Dispute Resolution Proceeding using email on April 10, 2018. I find that the Notice of Dispute Resolution Proceeding was sufficiently served to the Landlord for the purposes of the Act.

I find that the Tenants provided their forwarding address to the Landlord on March 2, 2018. There is no evidence before me that the Landlord applied for dispute resolution within 15 days of receiving the Tenants' forwarding address. I find that there was no agreement from the Tenants that the Landlord could retain the security deposit or pet damage deposit.

I find that the Landlord breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlord must pay the Tenants \$7,000.00 which is double the amount of the security deposit and pet damage deposit.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were successful with their application,

I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

Since the Landlord has already returned \$3,500.00, I order the Landlord to pay the Tenants the amount of \$3,600.00. I grant the Tenants a monetary order in the amount of \$3,600.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

I find that the Tenants served the Landlord the Notice of Dispute Resolution Proceeding using email on April 10, 2018. I find that the Notice of Dispute Resolution Proceeding was sufficiently served to the Landlord for the purposes of the Act.

The Landlord failed to return the security deposit and pet damage deposit to the Tenants in accordance with section 38 of the legislation.

The Tenants are granted double the amount of the security deposit and pet damage deposit. I grant the Tenants a monetary order in the amount of \$3,600.00.

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: October 16, 2018

Residential Tenancy Branch