



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 an Application for Dispute Resolution (the “Application”) that was filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for double the amount of their security deposit plus recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenants, who both provided affirmed testimony. The Landlord did not attend. The Tenants were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Landlord did not attend the hearing, I confirmed service of these documents as explained below.

The Tenants testified that on February 21, 2018, a copy of the Application, the Notice of Hearing, and the documentary evidence before me was posted to the Landlord’s door in the presence of a witness and in view of their dash camera. The Tenants stated that they later realized that the Application cannot be served by posting a copy to the door and subsequently re-served all of the above noted documents on the Landlord personally at his home on February 22, 2018. As a result, I find that the Landlord was personally served the Application, the Notice of Hearing, and the documentary evidence before me from the Tenants on February 22, 2018.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

At the Request of the Tenants, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses confirmed in the hearing.

Preliminary Matters

During the hearing the Tenants testified that they rented a self-contained basement suite in the Landlord's home, and that the Landlord lived above them during the tenancy. On the Application the address for the rental unit and the address for the Landlord are the same. Based on the Tenants' testimony, the Application and the Residential Tenancy Branch (the "Branch") records were updated to reflect that the Tenants resided in a basement suite at the rental address.

Issue(s) to be Decided

Are the Tenant's entitled to the return of double their security deposit pursuant to section 38 of the *Act*?

Are the Tenants entitled to recovery of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The Tenants testified that they rented a self-contained basement suite in the Landlord's home and that the month-to-month tenancy began on August 1, 2017. The Tenants testified that rent in the amount of \$1,200.00 was due on the first day of each month and that a security deposit in the amount of \$600.00 was paid. In support of this testimony the Tenants provided a copy of the security deposit receipt in the documentary evidence before me.

The Tenants stated that the Landlord never offered them any opportunities for a condition inspection at the start of the tenancy and that to their knowledge one was never completed in their absence as they never received a move-in condition inspection report from the Landlord. However, the Tenants stated that a condition inspection was completed with the Landlord at the end of the tenancy on January 31, 2018, at which point they provided the Landlord with their forwarding address in writing and returned the keys to the rental unit. In support of this testimony the Tenants provided me with a copy of the letter given to the Landlord with their forwarding address and an audio recording of the move-out inspection. In the Audio recording the Tenants can be heard advising a person who appears to be the Landlord that a package being given to him includes their forwarding address and returning the keys.

The Tenants stated that as of today's date, the Landlord has not returned their security deposit to them or filed a claim with the Branch requesting authorization to keep it. As a result, the Tenants are seeking the return of double the amount of their security deposit.

The Landlord did not attend the hearing to provide any evidence or testimony for my consideration.

Analysis

Section 38(1) of the *Act* states the following about security deposits:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I accept the Tenants' undisputed testimony and documentary evidence that their forwarding address was provided to the Landlord, in writing, on January 31, 2018, and that the tenancy ended on that date. As a result, I find that the Landlord had until February 15, 2018, to either return the security deposit to the Tenants, or file a claim against it with the Branch. I accept the Tenant's undisputed testimony that the security deposit has yet to be returned to them and there is no evidence before me that Landlord has filed a claim with the Branch seeking retention of the Tenants' security deposit. Further to this, I also accept the Tenants' testimony that the Landlord failed to offer them two opportunities for a condition inspection or to complete one with them at the start of the tenancy as required by section 23 of the *Act*.

Based on the above, I find that the Landlord extinguished his right to claim against the Tenants' security deposit pursuant to section 24(2) of the *Act*. In any event, as the Landlord did not file a claim against the deposit or return it to the Tenants by

February 15, 2018, I find that the Landlord also breached section 38(1) of the *Act*. As a result, I find that the Tenants are entitled to \$1,200.00, for the return of double the amount of their security deposit pursuant to section 38(6) of the *Act*. As the Tenants were successful in their Application, I also grant them recovery of their filing fee pursuant to section 72 of the *Act*. The Tenants are therefore entitled to a Monetary Order in the amount of \$1,300.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenants a Monetary Order in the amount of \$1,300.00. The Tenants are provided with this 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: September 18, 2018

Residential Tenancy Branch