



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 in response to an application from the tenant pursuant to the *Residential Tenancy Act* (“*Act*”) for:

- authorization to obtain a return of the security or pet deposit, pursuant to section 38 of the *Act*,
- a return of the filing fee pursuant to section 72 of the *Act*.

Only the tenant’s agent, T.T. (the “tenant”) appeared at the hearing. The tenant was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The tenant explained that the application for dispute and evidentiary package were sent to the landlords by way of Canada Post Registered Mail. A copy of the Canada Post Registered Mail receipt and tracking number were provided to the hearing showing the documents were mailed on March 14, 2018. Pursuant to sections 88, 89 & 90 of the *Act*, the landlords are deemed served with these documents on March 19, 2018, five days after their posting.

Issue(s) to be Decided

Is the tenant entitled to a return of the security deposit? If so should it be doubled?

Can the tenant recover the filing fee?

Background and Evidence

The tenant's agent explained this tenancy began in November 2016 and ended in February 2018. Rent was \$595.00 per month and a security deposit of \$600.00 paid at the outset of the tenancy continues to be held by the landlords.

The tenant is seeking twice the return of the security deposit along with a return of the filing fee. The tenant said a forwarding address was provided to the landlord via text message in approximately the middle of January 2018. The tenant explained the landlord refused to perform a condition inspection walk-thru of the property following the conclusion of the tenancy and the tenant said no permission was ever given to the landlord to withhold any part of the security deposit.

Analysis

Section 38 of the *Act* requires a landlord to either return a tenant's security or pet 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 and upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security or pet deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

I order the landlord to return the outstanding security deposit of \$600.00 to the tenant. I decline to award a doubling of the security deposit to the tenant, as the tenant could not adequately identify the date on which a forwarding address was received by the landlord, therefore making it impossible to determine when the 15 day time period for a return of the deposit were to commence pursuant to section 38 of the *Act*. In addition, the tenant said the landlord was only sent a forwarding address by text message, a method of service which is not recognized under the *Act*.

As the tenant was successful in the application he may recover the \$100.00 filing fee pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$700.00 against the landlords. This amount includes a return of the security and a return of the filing fee. The tenant is provided with a Monetary Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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 28, 2018

Residential Tenancy Branch