



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 tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:46 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. Tenant T.M. (the "tenant") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant testified that the landlord was served the notice of dispute resolution package by registered mail on February 3, 2018. The tenant provided the Canada Post Tracking Number to confirm this registered mailing. I find that the landlord was deemed served with this package on February 8, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

1. Are the tenants entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence of the tenant, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant provided undisputed testimony that this tenancy began on March 1, 2017 and ended on October 31, 2017. Monthly rent in the amount of \$1,200.00 was payable on the first day of each month. A security deposit of \$600.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenant testified that on September 30, 2017 she slipped a letter dated September 30, 2017 under the landlord's door. The letter provided the following: notice of the tenants' intention to vacate the property at the end of October 2017, the tenants' forwarding address in writing, and a request for the return of the security deposit. The letter dated September 30, 2017 was entered into evidence.

The tenant testified that on September 30, 2017 she texted the landlord and informed him that she slipped a letter under his door. The tenant testified that this was an active text message conversation between herself and the landlord and that she received texts from the landlord after she sent the text regarding the letter dated September 30, 2017.

The tenant testified that the landlord did not return her security deposit. The tenant testified that on January 22, 2018, she texted the landlord and again requested the return of her security deposit. The tenant testified that the landlord texted her back that she would have to come back and fix the bedroom door before he would return her deposit. The tenant testified that she has not received a notice of dispute resolution from the landlord regarding her security deposit. The tenant testified that she did not authorize the landlord to retain any portion of her deposit.

Analysis

Section 38 of the Act requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a 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 deposit.

However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the undisputed testimony of the tenant. The tenancy ended on October 31, 2017. The tenants provided the landlord with their forwarding address by slipping a letter under the door on September 30, 2017. The tenant informed the landlord of the presence of the letter in an active text message conversation on September 30, 2017. While this does not conform with the service requirements set out in section 88 of the *Act*, I find the forwarding address is sufficiently served pursuant to section 71(2) of the *Act* because the tenant informed the landlord of the presence of the September 30, 2017 letter in an active text message conversation. The landlord did not return the security deposit or make an application for dispute resolution to claim against it.

Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit. In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive \$1,200.00, which is double the security deposit. Although the tenants did not apply to obtain a return of double the deposit, they did not specifically waive their right to it. Accordingly, I must consider the doubling provision as per Residential Tenancy Policy Guideline 17.

As the tenants were wholly successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlord pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenants 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 13, 2018

Residential Tenancy Branch