



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing addressed the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") to:

- a monetary order for return of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord did not participate in the conference call hearing, which lasted approximately 13 minutes. Tenant SB and tenant RB (collectively "the tenant") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that on March 19, 2018 the tenants' application for dispute resolution hearing package was sent via registered mail to the landlord. The tenant provided a Canada Post receipt and tracking number as proof of service. Based on the testimony of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the landlord has been deemed served with the application on March 24, 2018, the fifth day after its registered mailing.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of the security deposit?

Are the tenants authorized to recover the filing fee for this application?

Background and Evidence

As per the testimony of the tenant, the tenancy began on November 1, 2016 on a fixed term until April 31, 2017 at which time it continued on a month-to-month basis. Rent in the amount of \$1,450.00 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$1,450.00 and pet deposit in the amount of \$150.00 at the start of the tenancy. The tenants withheld December rent in the amount of

\$1,029.03 ($\$1,450.00/31 \text{ days} = \$46.77 \times 22 \text{ days}$) and vacated the rental unit on December 22, 2017.

The tenant testified that on an undisclosed date, the forwarding address was emailed to the landlord. The tenant testified that after learning this was not sufficient service, the tenants included their forwarding address in the hearing package mailed to the landlord on March 19, 2018 by way of registered mail.

In the tenants' application, the tenants seek compensation in the amount of \$570.00, including the following;

Item	Amount
Security deposit	\$1,450.00
Pet deposit	\$150.00
Less December rent	(\$1,029.03)

Upon review of the tenants claim, I note the above does not equate to \$570.00, but rather totals \$570.97. In accordance with section 64(3) of the *Act*, I amend the tenants' application to reflect the amount claimed to \$570.97.

The tenants are also seeking to recover the \$100.00 filing fee for this application from the landlord.

Analysis

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit. Should the landlord fail to do this, the landlord must pay the tenant double the amount of the security deposit

Upon review of the documentary evidence submitted by the tenants, I came across a February 7, 2018 Canada Post receipt and tracking number entitled "proof address was provided." The address used for service was the landlord's service address as provided on the tenancy agreement. Although this is incongruent with the tenant's testimony, I find based on the evidence before me and on the balance of probabilities that the tenants served the landlord with their forwarding address on February 7, 2018. In accordance with sections 89 and 90 of the *Act* I find that the landlord has been deemed

served with the forwarding address on February 12, 2018, the fifth day after its registered mailing.

The landlord received the forwarding address on February 12, 2018. The landlord did not file an arbitration application to retain the deposit and the landlord did not return the deposit. Based on this, I find the tenant is entitled to double the value of their security deposit in the amount of \$3,200.00 less \$1,029.03 withheld rent for a total of \$2,170.97.

As the tenants was successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for the application for a total monetary award of \$2,270.97.

Conclusion

Item	Amount
Security deposit x2	\$2,900.00
Pet deposit x 2	\$300.00
Less December rent	(\$1,029.03)
Filing fee	100.00
Total Monetary Claim	\$2,270.97

I issue a monetary order in the tenants' favour in the amount of \$2,270.97 against the landlord.

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 01, 2018

Residential Tenancy Branch