



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38, including double the amount;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

Issues

Is the tenant entitled to a return of all or a portion of the security deposit, including double the amount?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy ended on June 29, 2018 and the tenant provided a forwarding address to the landlord in writing on this date. The tenant paid a security deposit of \$800.00 and a pet deposit of \$800.00 at the start of the tenancy.

The tenant is claiming double the security deposit arguing that the landlord failed to return the security deposit within 15 days of the date the landlord received the tenants forwarding address in writing. The tenant confirmed that the original security deposit and pet deposit has been returned in full so he is only seeking the penalty amount. The tenant submits that the security deposit should have been returned by July 14, 2018. This day fell on a Saturday and the landlord's office was closed on this date. He contacted the office on Monday, July 16, 2018 to inquire why it had not yet been returned. He received a direct deposit to his account for the full deposit on July 17,

2018. He said he asked for proof of when the return was initiated and states he was only provided with a one line ledger entry according to which the deposit was initiated on July 14, 2018. The tenant argues that this does not prove the deposit actually being initiated on this date.

The landlord testified that their accountant provided a ledger showing the deposit was initiated on July 14, 2018. The deposit was returned via direct deposit to the tenant's account. The landlord testified that he did not know why the tenant received it late and it could have been an issue with the banking system.

Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

I find the tenant did provide a forwarding address in writing to the landlord and the tenants' security deposit was not refunded within fifteen days of the end of the tenancy or the date a forwarding address was provided as required by section 38 of the Act. Neither did the landlord have written authorization to retain the security deposit or file an application to claim against the deposit; therefore, the doubling provisions of section 38 apply. I find the landlord submitted insufficient evidence to support that the return of the tenant's security deposit was initiated on July 14, 2018. The landlord did not submit any evidence in support other than the ledger entry, which was submitted by the tenant. The ledger entry on its own does not prove that the deposit was actually sent on this date.

I allow the tenant's claim and award an amount of \$1600.00, which is just the penalty portion as the tenant has received the original security and pet deposit in full.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of \$1700.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$1700.00. 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: November 27, 2018

Residential Tenancy Branch