



Dispute Resolution Services

Page: 1

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* ("Act") for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

The tenants testified and supplied documentary evidence that they served the landlords with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on July 20, 2018. The tenants have provided tracking information from Canada Post indicating the mail had been signed for on July 25, 2018. I find the landlords have been duly served in accordance with the Act. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

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

Background, Evidence

The tenant's undisputed testimony is as follows. The tenancy began on January 15, 2018 ended on April 30, 2018. The tenants were obligated to pay \$1000.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$500.00 security deposit. The tenants testified that written condition inspection reports were not

conducted at move in or move out. The tenants testified that they provided their forwarding address in writing on March 29, 2018 to the landlords. The tenants testified that they also sent it by e-mail on July 11, 2018 and advised the landlord they could return the deposit by e-transfer if that was easier for them. The tenants are seeking the return of their deposit and the recovery of the filing fee.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the tenants, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Section 38 (1) says that 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.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the **undisputed testimony** of the tenants, the documentary evidence before me and in the absence of any disputing testimony from the landlord, I find that the landlord has not acted in accordance with Section 38 of the Act and that the tenants are entitled to the return of double their deposit in the amount of \$1000.00.

The tenants are also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The tenants have established a claim for \$1100.00. I grant the tenants an order under section 67 for the balance due of \$1100.00. This order may be filed in the Small Claims 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 22, 2018

Residential Tenancy Branch