



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was scheduled in response to the tenants' 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; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not participate in the conference call hearing, which lasted approximately 10 minutes. Tenant CG (the "tenant") attended the hearing and confirmed she had authority to speak on behalf of tenant JL, who was not present. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that on September 2, 2018 she forwarded the tenants' application for dispute resolution hearing package ("application") 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 September 7, 2018, the fifth day after its registered mailing.

Issue(s) to be Decided

Are the tenants authorized to obtain a return of all or a portion of the security deposit?

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

Background and Evidence

As per the submitted tenancy agreement and testimony of the tenant, the tenancy began on September 1, 2017 on a fixed term until August 31, 2018. Rent in the

amount of \$2,700.00 was payable on the first of each month. The tenants vacated the unit in June of 2018.

The tenants remitted a security and pet deposit in the total amount of \$1,850.00 at the start of the tenancy. The tenants and landlord were scheduled to conduct the move out inspection on July 31, 2018, however just two hours prior to the inspection the landlord contacted the tenants and cancelled. As instructed by the landlord, the tenants returned the keys to the downstairs tenants, this same date. The following day on August 1, 2018, the tenant served the landlord the tenants' forwarding address in writing via text message. The tenant provided a copy of the text message as proof of service. The tenant testified that the landlord did not re-schedule the move-out inspection.

The tenant testified that on August 19, 2016 the tenants received their security and pet deposit in the amount of \$1,245.57 from the landlord, however because the tenants did not provide written authorization for the landlord to withhold any portion of the security and pet deposit and it was received past the fifteen days allowable under the *Act*, the tenants now seek double the amount of the security deposit less the \$1,245.57 already paid.

The tenants also seek to recover the \$100.00 filing fee 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. The tenant may waive their right to the return of the security deposit through written authorization to the landlord. In the absence of written authorization to retain the security deposit from the tenant, the landlord must return the security deposit or file an application within fifteen days. Should the landlord fail to do this, the landlord must pay the tenant double the amount of the security deposit.

Section 71 of the *Act* permits me the authority to deem a party sufficiently served with documents even if service did not occur in a manner that is required under the *Act*. Based on the text message thread before me and the undisputed testimony of the tenant, I deem the landlord sufficiently served with the forwarding address on August 1, 2018. Within fifteen days of receipt of the forwarding address the landlord did not file an arbitration application to retain the deposit, the landlord did not return the full deposit and the landlord did not receive written authorization to retain any portion of it. Based

on this, I find the tenants are entitled to double the value of their security deposit in the amount of \$3,700.00 less the \$1,245.57 paid late for a total of \$2,454.43.

As the tenants were 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 award of \$2,554.43.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$2,554.43 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: December 28, 2018

Residential Tenancy Branch