



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* ("Act") for:

- authorization to obtain a return of the security deposit, pursuant to section 38;
- authorization to recover the filing fee for their application, pursuant to section 72.

"Landlord AM" did not attend this hearing, which lasted approximately 22 minutes. Landlord JM ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that he had permission to speak on behalf of landlord AM, as an agent at this hearing (collectively "landlords"). The tenant intended to call her boyfriend as a witness but his testimony was not required.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlords' written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that both landlords were duly served with the tenant's application and the tenant was duly served with the landlords' written evidence package.

Issues to be Decided

Is the tenant entitled to a return of her security deposit?

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

Background and Evidence

Both parties agreed to the following facts. This tenancy began on January 1, 2017 and ended on June 30, 2018. Monthly rent in the amount of \$1,100.00 was payable on the first day of each month. A security deposit of \$500.00 was paid by the tenant and the landlords continue to retain this deposit. Both parties signed a written tenancy agreement. A move-in condition inspection report was completed for this tenancy. A move-out condition inspection report was completed by the landlords only, with no tenant participation or signature. A written forwarding address was provided by the tenant to the landlords by way of text message during the course of the tenancy and the landlords used this address to send the tenant's mail. The tenant did not give written permission for the landlords to retain any amount from her security deposit. The landlords did not file an application for dispute resolution to keep any part of the deposit.

The tenant seeks a return of her security deposit of \$500.00. The tenant also seeks to recover the \$100.00 filing fee paid for this application.

Analysis

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

Section 38 of the *Act* requires the landlords to either return the tenant's 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 landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlords have obtained the tenant's written authorization to retain all or a portion of the 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 tenant to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings, on a balance of probabilities. The tenancy ended on June 30, 2018. The tenant did not give the landlords written permission to keep any part of her security deposit. The landlords did not file an application to keep the deposit.

I find that the tenant provided her written forwarding address to the landlords by way of text message during the tenancy. Although text message is not a permitted service method under section 88 of the *Act*, I find that the landlords were sufficiently served with the address as per section 71(2)(c) of the *Act*, as the landlords acknowledged receipt and used this address to send the tenant her mail during the tenancy. Therefore, I find that the tenant is not entitled to the return of double the value of her security deposit because she did not use an approved service method.

Over the period of this tenancy, no interest is payable on the landlords' retention of the tenant's security deposit. In accordance with section 38(6)(b) of the *Act*, I find that the tenant is entitled to a return of the original amount of her security deposit of \$500.00.

As the tenant was successful in this application, I find that she is entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$600.00 against the landlord(s). The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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: January 24, 2019

Residential Tenancy Branch