



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD

Introduction

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

- a monetary order for the return of the security and pet deposits held in trust by the Landlord;
- authorization to recover the filing fee for this application from the Landlord.

Both Tenants attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to ask questions. The Landlord did not attend the hearing.

The Tenants served the Landlord with the Notice of Hearing in compliance with section 88 of the *Residential Tenancy Act* ("Act"), sent via registered mail on September 7, 2018. The Tenants provided a tracking number and upon checking the Canada Post tracking guide, I discovered that the Landlord refused to accept the package on September 24, 2018. According to Residential Tenancy Branch Policy Guideline 12, "Where the Registered Mail is refused or deliberately not picked up receipt continues to be deemed to have occurred on the fifth day after mailing." Accordingly, I find the Tenants served the Notice of Hearing on the Landlord on September 12, 2018.

I reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure; however, only the evidence submitted in accordance with the Rules of Procedure and evidence that is relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

The Tenants confirmed their email address at the outset of the hearing and confirmed their understanding that the decision would be emailed to them and mailed to the Landlord, and that any applicable orders would be emailed to the appropriate Party.

Issues to be Decided

- Are the Tenants entitled to the return of their security and pet deposits pursuant to Section 38 of the *Act*?
- Are the Tenants entitled to recover the \$100.00 filing fee for this application from the Landlord, pursuant to Section 72 of the *Act*?

Background and Evidence

The Tenant's evidence in the hearing was that a tenancy between the Parties began on May 26, 2017 and ended on November 30, 2017, in accordance with the *Act*. During the tenancy, the monthly rent was \$1,150.00 and was due on the first day of each month. The Tenants said they paid a security deposit of \$575.00 and a pet deposit of \$575.00 (the "Deposits"), which the Landlord continues to hold.

The Tenants state that neither an incoming nor an outgoing condition inspection report was completed, and that the Landlord did not offer the Tenants any opportunity to participate in a condition inspection of the rental unit at the start or end of the tenancy.

The Tenants said that they gave the Landlord their forwarding address via text on December 8, 2017 at 1:04 p.m. The Tenants provided a copy of the text as documentary evidence for the hearing. The text shows that this was a means of communication between the Parties prior to this text being sent. The Tenants state that the deposits have not been returned to them by the Landlord.

Analysis

Given all the evidence before me overall, I find that the Tenants paid the Landlord a security deposit and a pet deposit of \$575.00 per deposit for a total of \$1,150.00. Further, with no evidence to the contrary, I find that the Landlord did not return the deposits to the Tenants.

Section 38(1) of the *Act* provides that a landlord must return deposit(s) or apply for dispute resolution within 15 days of the later of the end of the tenancy and the date the forwarding address is received in writing. If a landlord fails to repay the deposit(s) or make an application for dispute resolution within the 15 days, the landlord is liable under section 38(6), to pay the tenant double the amount of the deposit(s). There is no evidence before me that the Landlord was entitled to withhold all or a portion of either

deposit, pursuant to sections 38(3) and 38(4) of the Act.

In the hearing, the Tenant, MP, directed my attention to the documentary evidence they submitted, which demonstrates that the Tenants provided the Landlord with a text message with their forwarding address on December 8, 2017 at 1:04 p.m. The Tenants provided evidence that the Parties had communicated via text prior to this, so I find on a balance of probabilities that the Landlord received the Tenants' forwarding address in this manner on December 8, 2017. I find that a text message in this set of circumstances meets the requirement that the forwarding address be in writing under section 38(1)(b).

The Landlord had until December 23, 2017 to return the Tenants' Deposits or to apply for dispute resolution, neither of which she did. Accordingly, I find that the Tenants are entitled to the return of double the Deposits from the Landlord.

The Landlord currently holds Deposits in the total amount of \$1,150.00 and is obligated under section 38 to return double this amount to the Tenants. There is no interest payable on the Deposits under the regulations.

As the Tenants are successful in their Application, I award them the \$100.00 filing fee pursuant to section 72 of the Act.

I grant the Tenants an order under sections 38, 67 and 72 of the *Act* for a Monetary Order of \$2,400.00, which represents double the Deposits and recovery of the filing fee.

Conclusion

Pursuant to 67 of the Act, the Landlord is ordered to pay \$2,400.00 to the Tenants.

The Tenants are provided with a Monetary Order according to these terms. The Tenants are provided with this Order, which they must serve on the Landlord as soon as possible. Should the Landlord fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court.

Although this decision has been rendered more than 30 days after the conclusion of the proceedings, section 77(2) of the *Act* states that the Director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d).

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: February 11, 2019

Residential Tenancy Branch