



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD, FFT

Introduction

On October 4, 2018, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing; however, the Landlord did not make an appearance during the 13-minute conference call. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package, including their evidence, to each Landlord by registered mail on October 11, 2018 and receipts were provided to confirm service (the registered mail tracking number is provided on the first page of this decision). The Tenant confirmed the Landlords’ address that he sent the packages to and he advised that both packages were refused and returned to sender. The Tenant then stated that he mailed the packages back to the Landlords by regular mail on November 9, 2018 and he provided receipts confirming this. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Landlords were deemed to have received the Notice of Hearing package and evidence five days after it was sent by registered mail.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a return of double the security deposit?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

The Tenant stated that the tenancy started on August 15, 2017 and the tenancy ended when the Tenants vacated the premises on August 13, 2018. Rent was established at \$1,450.00 per month due on the first day of each month. A security deposit of \$725.00 was also paid.

The Tenant advised that they provided their forwarding address in writing by text on August 18, 2018 and they submitted copies of text messages, into evidence, from the Landlords confirming that they received this address. He stated that he received a cheque back from the Landlords in the amount of \$370.00 on September 19, 2018 and he referenced a text from the Landlords advising that they sent this cheque on September 14, 2018. The Tenant stated that they did not give the Landlords their written consent to deduct any amount from the deposit.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlords to retain the deposit. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposit, and the Landlords must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the undisputed evidence before me, I am satisfied that the Landlords had the Tenants' forwarding address by text on August 18, 2018. As the tenancy ended on August 13, 2018, I find that August 18, 2018 is the date which initiated the 15-day time limit for the Landlords to deal with the deposit. Furthermore, there is no provision in the *Act* which allows the Landlords to retain a portion of the deposit without authority under the *Act* or having the Tenants' written consent.

As the Landlords did not return the security deposit in full within 15 days of August 18, 2018, in essence illegally withholding the deposit contrary to the *Act*, I am satisfied that the Landlords breached the requirements of Section 38. As such, I find that the Tenants have established a claim for a monetary award amounting to double the original security deposit. Under these provisions, I grant the Tenant a Monetary Order in the amount of \$1,450.00; however, as the Tenants have received a cheque in the amount of \$370.00 already, I am reducing this monetary award accordingly. As such, I grant the Tenants a monetary award in the amount of **\$1,080.00**.

As the Tenants were successful in their claims, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlords to the Tenants

Item	Amount
Double the security deposit	\$1,450.00
Less amount returned already	-\$370.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$1,180.00

Conclusion

I provide the Tenants with a Monetary Order in the amount of **\$1,180.00** in the above terms, and the Landlords must be served with **this Order** as soon as possible. Should the Landlords 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: February 1, 2019

Residential Tenancy Branch