



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDCT FF

Introduction

This hearing was convened in response to an application from the tenants pursuant to the *Residential Tenancy Act* (“*Act*”) for:

- authorization to obtain a return of the security and pet deposit, pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Only the tenants called into the conference call.

The tenants explained they sent a copy of their application for dispute and evidentiary package to the landlord by way of Canada Post Registered Mail on October 26, 2018. A copy of the Canada Post receipt and tracking number were provided by the tenants. Pursuant to sections 88, 89 & 90 of the *Act*, the landlord is deemed served with these documents on October 31, 2018, five days after their posting.

Issue(s) to be Decided

Are the tenants entitled to a monetary award?

Can the tenants recover the filing fee?

Background and Evidence

Undisputed testimony provided by the tenants explained this tenancy began on June 1, 2017 and ended on June 2, 2018. Rent was \$1,750.00 per month and two deposits of \$875.00 each for pet and security were collected by the landlord at the outset of the

tenancy. The tenants said the landlord continues to retain these deposits in their entirety, along with a \$75.00 FOB deposit.

The tenants said they had reached a verbal agreement with the landlord following the conclusion of the tenancy to return their deposits by way of e-transfer. The tenants said the landlord did not return any portion of their deposits despite assurances that steps would be taken to do so. The tenants could not say exactly when their forwarding address was provided to the landlord in writing but they said they did so by regular mail on at least two occasions.

In addition to funds sought for a return of their deposits the tenants requested a return of the expenses related to the title search they undertook to locate the landlord and a return of the filing fee.

Analysis

Section 38 of the *Act* requires a landlord to either return a tenant's security or pet deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy and upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security or pet deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

I find no evidence was presented that the tenants agreed in writing to allow the landlord to withhold any portion of their security, pet or FOB deposits. I therefore order the landlord to return all portions of the tenants' security, pet and FOB deposits. As the tenants could not accurately provide a date on which their forwarding address was given to the landlord in writing, I decline to award a doubling of the deposits.

I find the tenants are also entitled to a return of the expense related to the title search pursuant to section 67 of the *Act*. As the tenants were successful in their application they may recover the \$100.00 filing fee pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order in the tenants' favour as follows:

ITEM	AMOUNT
Return of Security Deposit	\$875.00
Return of Pet Deposit	875.00
Return of FOB Deposit	75.00
Title Search	9.45
Return of Filing Fee	100.00
TOTAL =	\$1,934.45

The tenants are awarded a monetary order of \$1,934.45 against the landlord. Should the landlord 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 15, 2019

Residential Tenancy Branch