



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On November 19 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for the Landlord to return of all or part of the pet damage deposit or security deposit, and to recover the filing fee for the Application.

The Tenant appeared at the hearing; however, the Landlord did not. The Tenant provided affirmed testimony that he served the Landlord with the Notice of Dispute Resolution Proceeding using Canada Post Registered Mail sent on November 20, 2018. The Tenant provided the Registered Mail tracking information as proof of service. The Tenant testified that he sent the mail addressed to the Landlord who lives at the dispute address. I find that that the Notice of Hearing was served to the Landlord in accordance with sections 89 and 90 of the Act and the Notice of Hearing is deemed to have been received by the Landlord on the fifth day after it was mailed.

The hearing proceeded. The Tenant provided affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is Tenant entitled to the return of the double the security deposit?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The Tenant testified that the tenancy began in October 2016, and ended on September 30, 2018. Rent in the amount of \$1,000.00 was due by the first day of each month. The Tenant paid the Landlord a security deposit of \$500.00.

The Tenant testified that the Landlord did not return the security deposit after the Tenant moved out of the rental unit and provided his forwarding address in writing.

The Tenant testified that there was no agreement that the Landlord could retain any amount of the security deposit or pet damage deposit.

The Tenant testified that he provided the Landlord with his forwarding address in writing on November 1, 2018. The Tenant provided documentary evidence of the letter and a photograph of him dropping off the letter at the dispute address.

The Tenant is seeking double the amount of the security deposit.

Analysis

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

Section 38 (1) of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38 (6) of the Act provides that if the Landlord does not comply with 38(1) the Landlord must pay the Tenant double the amount of the security deposit.

I find that the Tenant provided his forwarding address to the Landlord on November 1, 2018, and it is deemed served three days later. There is no evidence before me that the Landlord applied for dispute resolution within 15 days of receiving the Tenant's forwarding address. I find that there was no agreement from the Tenant that the Landlord could retain the security deposit.

I find that the Landlord breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlord must pay the Tenant double the amount of the security deposit.

I order the Landlord to pay the Tenant the amount of \$1,000.00. I grant the Tenants a monetary order in the amount of \$1,000.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

Conclusion

The Landlord failed to return the security deposit and pet damage deposit to the Tenant in accordance with the legislation.

The Tenant is granted double the amount of the security deposit and the filing fee. I grant the Tenant a monetary order in the amount of \$1,100.00.

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: March 07, 2019

Residential Tenancy Branch