



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

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

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenants served the landlord with the notice of hearing package and the tenants' submitted documentary evidence via Canada Post Registered Mail. Both parties also confirmed the landlord served the tenants with her submitted documentary evidence via Canada Post Registered Mail on February 18, 2019. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of double the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenants seek a clarified monetary claim of \$1,400.00 which consists of return of double the \$650.00 security deposit paid and recovery of the \$100.00 filing fee.

Both parties confirmed the tenancy ended on September 30, 2018. The tenants stated that their forwarding address in writing was served to the landlord by leaving it on the kitchen counter on September 30, 2018. The landlord disputes that this was not received as claimed by the tenants. The landlord stated that the only copy of this document was received in evidence for this hearing. The tenants rely on the submitted photograph of the two duplicate documents, "ForwardingAddress" (a photograph of a document titled, End of Tenancy Inspection Form which was not completed. The landlord confirmed that the \$650.00 security deposit is still held by the landlord in dispute over a claim in compensation.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, I accept the undisputed evidence of both parties that the \$650.00 security deposit is being held by the landlord as of the date of this hearing. Both parties also confirmed that the tenancy ended on September 30, 2018.

The tenants have claimed that the tenants' forwarding address in writing was served to the landlord by leaving it on the rental unit door on September 30, 2018 on a form, "End of Tenancy Inspection Form". The landlord has disputed that this form was not received prior to the tenant filing an application for dispute. The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. In this case, the tenants rely solely on a photograph of the document titled, "End of Tenancy Inspection Form". I find that this is insufficient to establish service as the landlord has disputed

receipt of this document. In the absence of any other evidence, I order that the tenants are not successful in their application for return of double the security deposit. However, the tenants are entitled to return of the original \$650.00 security deposit and partial recovery of the filing fee of \$50.00.

Conclusion

The tenants are granted a monetary order for \$700.00.

This order must be served upon the landlord. 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.

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 12, 2019

Residential Tenancy Branch