



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 return of the security deposit pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The co-tenant KS (the "tenant") primarily spoke on behalf of both named tenants.

The landlord confirmed they had been served with the tenants application and evidence. Based on the testimonies I find that the landlord was served with the tenants' materials in accordance with sections 88 and 89 of the Act.

The landlord testified that they had served the tenants with their evidence by placing it in their mailbox. The landlord was uncertain what date service was performed. The tenants disputed having received the landlord's evidence. As the tenants dispute having been served with the landlord's evidence and the landlord was unable to provide details of when the materials were served, I have only considered those pieces of evidence included in the landlord's package that the tenants could confirm receiving on prior occasions such as the condition inspection report. I have taken this approach in accordance with Rule 3.17 of the Rules of Procedure.

Issue(s) to be Decided

Are the tenants entitled to a return of all or a portion of their security deposit?
Are the tenants entitled to recover the filing fee from the landlord?

Background and Evidence

The parties agree on the following facts. This tenancy ended on October 31, 2018. The tenants had provided a forwarding address in writing to the landlord prior to the end of the tenancy. A security deposit of \$825.00 and FOB deposit of \$50.00 were paid at the start of the tenancy. The parties participated in a move-out inspection together and signed a condition inspection report.

The tenant testified that they agreed to the landlord deducting the amount of \$169.15 from the security deposit for this tenancy. The parties agree that the landlord returned the amount of \$655.85 to the tenants by a cheque dated December 19, 2018. The landlord testified that they hand delivered the cheque to the tenants' mailbox but was uncertain when they returned the funds. The tenant testified that the deposit was returned on January 31, 2019.

Analysis

Section 38 of the *Act* requires the landlord to either return the 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 receiving a forwarding address in writing. If that does not occur, the landlord must pay a monetary award pursuant to section 38(6) of the *Act* equivalent to double the value of the security 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.

I accept the evidence of the parties that this tenancy ended on October 31, 2018 and that the tenants had provided a forwarding address prior to the end of the tenancy. Accordingly, I find that the landlord had 15 days from October 31, 2018, by November 15, 2018 to either return the security deposit or file an application to retain the amount that was not agreed to with the tenants. Based on the evidence before me I find that the landlord did not do either. I accept the evidence of the parties that the tenants had authorized the landlord to retain \$169.15 from the security deposit. However, the landlord did not have authorization to retain the balance of \$655.85 and was required to return that amount within 15 days of the end of tenancy. The landlord failed to do so. I also note that the landlord has failed to return the FOB deposit of \$50.00 and still holds that amount.

I do not find the landlord's submission that they were unable to return the security deposit as they could not obtain a quote for repairs in a timely fashion to be persuasive. A landlord is in the business of managing rental property and they cannot hold a security deposit for over a month after a tenancy has ended without authorization. If the landlord needed to obtain quotes for repairs it is incumbent upon the landlord to do so in a timely manner so that they can return the balance of the security deposit to the tenants within the timeline provided under the *Act*.

In accordance with section 38(6) of the *Act* and Residential Tenancy Policy Guideline 17 a tenant is entitled to double the amount of a security deposit excluding the amounts agreed to by the tenant that the landlord may retain. In the present circumstance I find that the tenants are entitled to a monetary award in the amount of \$655.85 which represents double the amount of the security deposit the landlord held without authorization, less the amount already returned to the tenants. ($\$825.00 - \$169.15 = \$655.85$; $\$655.85 \times 2 = \$1,311.70$; $\$1,311.70 - \$655.85 = \$655.85$).

The tenants are also entitled to a return of the \$50.00 FOB deposit paid for this tenancy.

As the tenants' application was successful the tenants may also recover the \$100.00 filing fee for their application.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$805.85. The landlord must be served with this Order as soon as possible. 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: May 6, 2019

Residential Tenancy Branch