



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On February 13, 2019, 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 with M.V. and X.X. attending as advocates for the Tenants. Tenant L.L. attended the hearing as well but advised that she had her own, separate written tenancy agreement with the Landlord, that started on a different day, and she paid a separate security deposit to the Landlord. As it appeared that Tenant L.L. had an entirely different tenancy unrelated to this Application, this Application was amended to remove Tenant L.L. She was advised to make her own, separate Application against the Landlord. The Landlord did not make an appearance. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package to the Landlord by registered mail on February 21, 2019 and she provided a registered mail tracking number to confirm service to the Landlord (the registered mail tracking number is on the first page of this decision). The Tenant sent this package to the dispute address and advised that the Landlord moved back into that unit. The tracking history indicated that the Landlord signed for this package on February 25, 2019. Based on this undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

The Tenant advised that she served her evidence to the Landlord by Xpresspost on May 18, 2019. This evidence was in the form of a USB stick and she did not confirm

that the Landlord could view this digital evidence. As this evidence was not served in accordance with the time frame requirements of Rule 3.14 of the Rules of Procedure, and as the Tenant did not confirm that the Landlord could view the contents of the USB stick in accordance with Rule 3.10.5 of the Rules of Procedure, I have excluded this evidence and will not consider it when rendering this decision.

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

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant stated that the tenancy started on September 7, 2017 and the tenancy ended when the Tenants vacated the rental unit on March 7, 2018. The Tenant advised that their signed tenancy agreement indicated that rent was established at \$1,450.00 per month due on the seventh day of each month. A security deposit of \$725.00 was also paid.

The Tenant advised that she provided the Landlord with her forwarding address in writing by hand in May 2018. She also then sent a registered mail package containing her forwarding address to the Landlord on June 27, 2018 (the registered mail tracking number is on the first page of this decision). The tracking history indicated that this package was delivered and picked up by the recipient on July 13, 2018. The Tenant stated that when she called the Landlord, the Landlord told her that she would refuse accepting any future documents, would feign ignorance with respect to the tenancy, and would not return their 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 Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives 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 Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the evidence before me, I am satisfied that the Landlord received the Tenants' forwarding address in writing on July 13, 2018. As the tenancy ended on March 7, 2018, I find that July 13, 2018 is the date which initiated the 15-day time limit for the Landlord to deal with the deposit. The undisputed evidence before me is that the Landlord did not return the security deposit in full or make an Application to keep the deposit within 15 days of July 13, 2018. Furthermore, there is no provision in the *Act* which allows the Landlord to retain a portion of the deposit without authority under the *Act* or having the Tenants' written consent.

As the Landlord did not return the security deposit in full or make an Application to retain it within 15 days of July 13, 2018, the Landlord in essence illegally withheld the deposit contrary to the *Act*. Thus, I am satisfied that the Landlord 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 Tenants a monetary award in the amount of **\$1,450.00**.

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 Landlord to the Tenants

Item	Amount
Double the security deposit	\$1,450.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$1,550.00

Conclusion

I provide the Tenants with a Monetary Order in the amount of **\$1,550.00** in the above terms, and 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: June 6, 2019

Residential Tenancy Branch