



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a return of the security and pet damage deposit pursuant to section 38.

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 tenant gave evidence that they served each of the landlords with the notice of dispute resolution and evidence by registered mail sent on March 6, 2019. The landlord disputed they received the materials. The tenant provided 2 valid Canada Post tracking numbers as evidence of service. Based on the evidence I find that each of the landlords is deemed served with the tenant's materials on March 11, 2019, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a return of the security and pet damage deposit for this tenancy?

Background and Evidence

The parties agreed on the following facts. This tenancy began in September 2016 and ended February 28, 2017. A security deposit of \$400.00 and pet damage deposit of \$400.00 were paid at the start of the tenancy and are still held by the landlords. No condition inspection report was prepared at any time for this tenancy.

The tenant provided a forwarding address in writing by email sent to the landlord on February 10, 2017. The tenant did not provide written authorization that the landlord may retain any portion of the deposits.

The landlord submits that this was a fixed term tenancy which the tenant ended prior to the date specified in the tenancy agreement. The landlord also made reference to ongoing harassment from the tenant.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security 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 or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) 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 permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the tenant's evidence that they provided their forwarding address to the landlord on February 10, 2017 and the tenancy ended February 28, 2017. I accept that the tenant has not provided written authorization that the landlord may retain any portion of the deposits.

Furthermore, I accept the evidence that no condition inspection report was prepared at any time during the tenancy. Section 24 of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if they do not comply with the requirements of section 23 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

I find the landlord's testimony to not affect the matter at hand. As the landlord acknowledged, they had not prepared a condition inspection report nor had they filed an application to retain the deposits. Even if the landlords suffered a monetary loss due to an early end of the fixed term tenancy or the breaches by the tenant, a landlord is not permitted to simply retain the deposits without taking the appropriate measures within the legislative timeline.

Based on the evidence before me, I find that the landlords have neither applied for dispute resolution nor returned the tenant's security and pet damage deposit in full

within 15 days of the tenancy ending. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$1,600.00 Monetary Order, double the value of the security and pet damage deposit for this tenancy. No interest is payable over this period.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1,600.00 against the landlords. The tenant is provided with a Monetary Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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 18, 2019

Residential Tenancy Branch