



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

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

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord's property managers and tenant S.S. (the "tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties confirmed service of the tenants' notice of application for dispute resolution in accordance with section 89 of the *Act*.

Preliminary Issue- Amendment

The tenant listed the landlord's property managers as the landlords on her application for dispute resolution. A copy of the tenancy agreement stating the landlord's name was entered into evidence. Pursuant to section 64 of the *Act*, I amend the tenants' application to state the correct landlord.

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
3. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 1, 2017 and ended on September 1, 2018. Monthly rent in the amount of \$740.00 plus \$20.00 per month for parking was payable on the first day of each month. A security deposit of \$370.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the tenant texted a property manager her forwarding address on September 17, 2018. Property manager T.L. confirmed receipt of the text message on September 17, 2018. Both parties agree that the landlord did not return the tenants' security deposit.

Property manager T.L. testified that the tenant gave less than one month's notice to leave the subject rental property resulting in a loss for September 2018 and so did not return the tenants' security deposit.

The tenant testified that she did not authorize the landlord to retain any of her security deposit.

Property manager T.L. testified that the landlord did not make an application to the Residential Tenancy Branch to retain the tenants' security deposit.

Analysis

Section 38 of the Act requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the 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 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 tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the testimony of both parties. The tenancy ended on September 1, 2018. The tenants provided the landlord with their forwarding address via text message on September 17, 2018. While this does not conform with the service requirements set out in section 88 of the Act, I find the forwarding address is sufficiently served pursuant to section 71(2) of the Act because property manager T.L. confirmed receipt of the forwarding address on September 17, 2018. The landlord did not return the security deposit or make an application for dispute resolution to claim against it.

Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit. In accordance with section 38(6)(b) of the Act and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive \$740.00, which is double the security deposit.

As the tenants were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlord pursuant to section 72 of the Act.

Conclusion

I issue a Monetary Order to the tenants in the amount of \$840.00.

The tenants are provided with this Order 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 21, 2019

Residential Tenancy Branch