



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order for return of double the \$800.00 security deposit, and to recover the cost of their \$100.00 Application filing fee.

The Tenant, V.J., appeared at the teleconference hearing, but no one attended on the Landlord's behalf. I explained the hearing process to the Tenant and gave him an opportunity to ask questions about the hearing process. During the hearing the Tenant was given the opportunity to provide evidence orally and to respond my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

The Tenant said that on March 15, 2019, he served his Application and documentary evidence on the Landlord via registered mail, and he provided a Canada Post tracking number for this package. Pursuant to section 90 of the Act, I find that the package was deemed served on March 20, 2019.

Preliminary and Procedural Matters

At the outset of the hearing, the Tenant confirmed the Parties' email addresses that were set out in the Application. He said he knows the Landlord's email address is valid, because he sent his rent payments to this address every month. The Tenant confirmed his understanding that the decision would be emailed to both Parties, and any orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Tenant said that the periodic tenancy began on June 18, 2018, with a monthly rent of \$1,070.00, due on the first day of each month. The Tenant said he paid a security deposit of \$800.00 and no pet damage deposit. The Tenant submitted a copy of text communications he had with the Landlord when the Tenant was enquiring about the rental unit based on the Landlord's advertisement. The Landlord's name is on the text communications, as are the rental unit address and the Tenants' email addresses.

The Tenant said that the tenancy ended on October 6, 2018, when his family vacated the rental unit to move elsewhere, in part because of concerns they had with the behaviour of other occupants of the residential property. He submitted text communications between him and the Landlord indicating that they discussed the end of the tenancy happening as of October 15, 2018. The Tenant said the text communications document the Landlord's approval of the Tenant's notice, and that the Tenants assisted the Landlord in finding new tenants to replace them.

The Tenant said that there was no condition inspection of the rental unit done on moving in or moving-out; however, he said he "...asked for an inspection many times, but nobody turned up." The Tenant said he took photographs of the condition on moving out and sent them to the Landlord. He said the Landlord confirmed in the text communications that the rental unit was left in good condition.

The Tenant submitted a copy of a letter dated February 10, 2019, which he said he sent to the Landlord via registered mail on February 11, 2019. The Tenant submitted a copy of the Canada Post receipt and tracking number for this mailing. The Tenant said the letter included a request for the return of the security deposit, their forwarding address, and reference to section 38 of the Act. Pursuant to section 90 of the Act, I find this notice was deemed served on the Landlord on February 16, 2019.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

I find that the tenancy ended on October 6, 2018, and that the Tenants provided their forwarding address to the Landlord on February 16, 2019. Section 38(1) of the Act states the following about the connection between these dates and a landlord's requirements regarding the return of the security deposit:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Pursuant to Section 38(1), the Landlord was required to return the \$800.00 security deposit within fifteen days of February 16, 2019, namely by March 3, 2019, or to apply for dispute resolution to make a claim against the security deposit. The Landlord provided no evidence that she returned any amount of the security deposit or applied to the RTB for dispute resolution, claiming against the security deposit. Therefore, I find the Landlord failed to comply with her obligations under Section 38(1).

Section 38(6)(b) states that if a landlord does not comply with section 38(1) that the landlord must pay the tenant double the amount of the security deposit. Therefore, I award the Tenants \$1,600.00 from the Landlord in recovery of double the security deposit. There is no interest payable on the security deposit. Given that the Tenants were successful in their Application, I also award them recovery of the \$100.00 Application filing fee for a total monetary order of \$1,700.00.

Conclusion

The Landlord violated section 38(1) of the Act by not returning the Tenants' security deposit or applying for dispute resolution within 15 days of the later of the end of the tenancy and the Landlord receiving the Tenants' forwarding address. As such, the Tenants' claim against the Landlord for return of double the security deposit is successful in the amount of \$1,600.00. I also award the Tenants recovery of the \$100.00 Application filing fee.

I grant the Tenants a monetary order under section 67 of the Act from the Landlord in the amount of \$1,700.00.

This order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 17, 2019

Residential Tenancy Branch