



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

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

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenants served the landlord with the notice of hearing package and the submitted documentary evidence on April 13, 2019. The tenants stated that it was via Canada Post Registered Mail. The landlord stated that it was left in her mailbox, but noted that no documentary evidence was provided with the package. The tenants stated that she is not sure if the evidence was provided as she has no proof of service. The landlord stated that the submitted documentary evidence was served to the tenant by posting it to the rental unit door on June 29, 2019. Neither party raised any other service issues. I accept the evidence of both parties and find that the landlord has been sufficiently served with the notice of hearing package as per section 90 of the Act. As for the tenants documentary evidence, I find as service has been disputed and the tenants are unable to provide any particulars of service or of any proof of service that the tenants' documentary evidence is excluded from consideration in this hearing. I also find that the tenants have been sufficiently served with the landlord's documentary evidence package as per section 90 of the Act.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties provided direct testimony that the tenancy ended on February 28, 2019 and that an email was sent to the landlord requesting the return of the \$950.00 security deposit and providing their forwarding address for its return on March 17, 2019.

The tenants seek return of the \$950.00 security deposit and recovery of the \$100.00 filing fee.

The landlord argued that the tenants vacated the rental unit leaving it dirty.

Both parties confirmed during the hearing that the landlord still holds the \$950.00 security deposit in dispute of cleaning costs and that the tenants did not give permission for the landlord to retain it. The landlord stated that she did not file an application to dispute returning the security deposit to the tenants.

Analysis

Section 38 of the Act requires the landlord to either return all of a 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 a 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 subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, I accept the undisputed testimony of both parties and find that the \$950.00 security deposit has been withheld by the landlord without consent, nor authorization of the Residential Tenancy Branch. Both parties confirmed the tenancy ended on February 28, 2019 and that the tenants provided their forwarding address in writing for the return of the security deposit via email on March 17, 2019. As such, the tenants are entitled to return of the original \$950.00.

The tenants having been successful are also entitled to recovery of the \$100.00 filing fee.

Pursuant to section 38 (6) of the Act, the landlord having failed to comply with subsection 38 (1) is liable to pay an amount equal to the \$950.00 security deposit. The tenants are granted \$950.00 as the landlord failed to comply with the Act.

Conclusion

The tenants are granted a monetary order for \$2,000.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the 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: July 09, 2019

Residential Tenancy Branch