



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

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

- authorization to obtain a return of double the amount of the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The "male landlord" did not attend this hearing, which lasted approximately 23 minutes. The female landlord ("landlord") and 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. The landlord confirmed that she had permission to represent the male landlord at this hearing (collectively "landlords").

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both landlords were duly served with the tenant's application.

The landlord confirmed that the landlords did not submit any written evidence for this hearing.

Issues to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of her security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on October 1, 2009 and ended on July 24, 2017. Monthly rent in the amount of \$1,100.00 was payable on the first day of each month. A security deposit of \$550.00 was paid by the tenant and the landlords continue to retain this deposit. A written tenancy agreement was signed by both parties. No move-in or move-out condition inspection reports were completed for this tenancy. The landlords received a written forwarding address from the tenant. The landlords did not file an application for dispute resolution to retain any amount from the tenant's security deposit.

The tenant claimed that she sent a forwarding address by email to the landlords on July 25, 2017 and July 26, 2017. The landlord confirmed that she received the forwarding address but could not recall the date. The tenant stated that the landlords did not have written permission to keep any amount from her security deposit. The landlord claimed that she had permission to keep the tenant's security deposit because she did not have an opportunity to respond or complete a move-out condition inspection with the tenant. She said that the tenant left the key in the door of the rental unit, which jeopardized the landlords' property. The landlord read out portions of the tenant's emails provided for this hearing, claiming that she did not move out when she was supposed to, as her movers came on a different date.

The tenant seeks a return of double the amount of her security deposit of \$550.00, totalling \$1,100.00, plus interest on the deposit, and the \$100.00 application filing fee. The landlords dispute the tenant's application.

Analysis

The tenant's application was filed on May 10, 2019, which is within two years from the end of the tenancy on July 24, 2017. Therefore, I find that I have jurisdiction to hear the tenant's application as it was made within the time limit.

Section 38 of the *Act* requires the landlords to either return the tenant's 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 landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlords have obtained the tenant's written authorization to retain all or a portion of the 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 tenant to pay to the landlords, 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 July 24, 2017. The tenant provided a written forwarding address by way of an email on July 25, 2017, which was received by the landlords. I accept the tenant's testimony that it was on July 25, 2017, as the tenant provided written evidence of same and the landlord could not recall the date. In accordance with section 71(2)(c) of the *Act*, I find that both landlords were sufficiently served with the tenant's forwarding address. Although email is not permitted under section 88 of the *Act*, the landlord acknowledged receipt and sent mail to the tenant at that forwarding address, evidence of which the tenant provided with her application.

I find that the tenant did not give the landlords written permission to retain any amount from her security deposit. The landlord's references to the tenant's emails do not indicate written permission to keep the deposit. The tenant's emails clearly state that she wants the return of her entire deposit of \$550.00. The landlords did not return the full deposit or make an application for dispute resolution to claim against the deposit within 15 days of the forwarding address being provided.

In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to receive double the value of her security deposit of \$550.00, totalling \$1,100.00. There is no interest payable on the deposit during the period of this tenancy.

As the tenant was successful in this application, I find that she is entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$1,200.00 against the landlord(s). The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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: July 29, 2019

Residential Tenancy Branch