



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On May 16, 2017, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for the Landlord to return of all or part of the pet damage deposit or security deposit, and to recover the filing fee for the Application.

The Tenants appeared at the hearing; however, the Landlords did not. The Tenant provided affirmed testimony that she served the Landlords with the Notice of Hearing using Canada Post Registered Mail sent on May 17, 2019. The Tenant provided the Registered Mail receipt number and a photograph of the envelope addressed to the Landlord as proof of service. I find that that the Notice of Hearing was served to the Landlords in accordance with sections 89 and 90 of the Act and the Notice of Hearing is deemed to have been received by the Landlords on May 22, 2019.

The hearing process was explained and the Tenants was asked if she had any questions. The Tenant provided affirmed testimony and were provided the opportunity to present her evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Tenants entitled to the return of the security deposit?
- Are the Tenants entitled to recover the cost of the filing fee?

Background and Evidence

The Tenant testified that the tenancy began in February 2017, and ended on April 30, 2019. Rent in the amount of \$1,000.00 was due by the first day of each month. The Tenants paid the Landlord a security deposit of \$500.00.

The Tenant testified that the Landlords did not return the security deposit after the Tenants moved out of the rental unit.

The Tenant testified that there was no agreement reached at the end of the tenancy that the Landlords could retain any amount of the security deposit.

The Tenant testified that the Tenants provided the Landlord with their forwarding address in writing. The Tenant testified that their forwarding address was provided to the Landlords on March 30, 2019. The Tenant provided a copy of their written notice to end tenancy which includes a forwarding address.

Analysis

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38 (6) of the Act provides that if a landlord does not comply with subsection (1), the landlord must pay the Tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the Tenants provided their forwarding address to the Landlords on March 30, 2019. There is no evidence before me that the Landlords applied for dispute resolution within 15 days of receiving the Tenants' forwarding address. I find that there was no agreement from the Tenants that the Landlords could retain an amount from the security deposit.

I find that the Landlord's breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlords must pay the Tenants double the amount of the security deposit.

I order the Landlords to pay the Tenants the amount of \$1,000.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

I grant the Tenants a monetary order in the amount of \$1,100.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlords are cautioned that costs of such enforcement are recoverable from the Landlords.

Conclusion

The Landlords failed to return, or make an application to keep the security deposit in accordance with the legislation.

The Tenants are granted double the amount of the security deposit and the cost of the filing fee. I grant the Tenants a monetary order in the amount of \$1,100.00.

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: August 27, 2019

Residential Tenancy Branch