



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD

Introduction

This hearing dealt with the tenants' 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; and,
- authorization to recover the filing fee for this application pursuant to section 72.

The tenants T.T., B.B. and K.P. attended the hearing. The tenants had full opportunity to provide affirmed testimony, present evidence, and make submissions.

The landlord did not attend the hearing. I kept the teleconference line open for the duration of the hearing to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct participant code was provided to the landlord.

The tenants testified that they served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail. The tenants testified that they believed that the mailing was sent on May 23, 2019. The tenants did not have the Canada Post tracking number available to confirm delivery. The tenants testified that they also placed the Notice of Hearing and Application for Dispute Resolution in the mailbox of the rental unit and they emailed the documents to the landlord. The tenants also testified that they notified the landlord of this application for dispute resolution by email.

Based on the undisputed testimony of the tenants, I find the tenants served the landlord with the documents pursuant to section 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to an order for return of their security deposit pursuant to section 38?

If so, are the tenants entitled to an amount equal to double the security deposit pursuant to section 38?

Are the tenants entitled to recover their filing fee for this application from the landlord pursuant to section 72?

Background and Evidence

The tenants testified that the tenancy started on November 1, 2018. The monthly rent was \$2,300.00 and the tenants paid a \$1,150.00 security deposit and a \$200.00 pet damage deposit.

The tenants testified that they sent the landlord an email on March 29, 2019 stating that the tenants were ending the tenancy as of April 30, 2019. The notice to end tenancy included a forwarding address for the tenants.

The tenants vacated the rental unit on April 27, 2019. The tenants performed a walkthrough with the landlord on April 27, 2019 but the parties did not prepare a written report. The tenants did not agree to allow the landlord to retain any portion of the security deposit or the pet damage deposit.

The tenants testified that the landlord has not returned any portion of the security deposit or the pet damage deposit. Furthermore, the tenants testified that the landlord has not served them with an application for dispute resolution to retain the security deposit or the pet damage deposit.

Analysis

Section 38 of the *Act* states that:

- 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.

Based on the undisputed testimony of the tenants, I find that the tenancy ended on April 27, 2019. Furthermore, on the basis of the written notice to end tenancy and the undisputed testimony of the tenants, I find that the tenants provided the landlord with written notice of their forwarding address on by email on March 29, 2019.

Section 88 of the *Act* specifies a variety of ways that documents, other than documents referred to in section 89 of the *Act*, must be served. Service by email is not one of methods of serving documents included in section 88 of the *Act*. However, pursuant to section 71(2)(c) of the *Act*, I find that the landlord has been sufficiently served with the tenants' forwarding address by email delivery.

The landlord had 15 days after the end of the tenancy and the delivery the tenants' forwarding address to repay the full security deposit and pet damage deposit or file an application for dispute resolution pursuant to section 38(1) of the *Act*. Since the tenants vacated the rental unit on April 27, 2019, the landlord had until May 12, 2019 to repay the deposits or file an application for dispute resolution.

Based upon the undisputed testimony of the tenants, I find that the landlord did not perform either of these requirements by the May 12, 2019 deadline. Accordingly, I find that the landlord is in violation of section 38(1) of the *Act*.

According to section 38(6) of the *Act*, if a landlord does not comply with section 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit. Since I have determined that the landlord has violated section 38(1) of the *Act*, I find that the landlord must pay the tenant double the amount of the security deposit and the pet damage deposit.

In addition, since the tenants have been successful this matter, I award the tenants \$100.00 for recovery of the filing fee.

The total award to tenants is accordingly \$2,800.00 as set forth below:

<u>Item</u>	<u>Amount</u>
Recovery of double the security deposit (\$1,150.00 times 2)	\$2,300.00
Recovery of double the pet damage deposit (\$200.00 times 2)	\$400.00
Filing recovered by tenants	\$100.00
Total award to tenants	\$2,800.00

Accordingly, I order the landlord to pay the tenants the sum of \$2,800.00.

Conclusion

The landlord's right to retain the security deposit is extinguished.

I grant the tenants' reimbursement of the filing fee.

I grant the tenants a monetary order in the amount of **\$2,800.00**. If the landlord fails to comply with this order, the tenants may file the order in the Provincial Court to be 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: September 03, 2019

Residential Tenancy Branch