



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

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 the security deposit pursuant to section 38.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The landlord confirmed service of the tenant's application and evidence package.

Preliminary and Procedural Matters – Late Evidence of Respondent

Rule 3.15 of the Residential Tenancy Branch (the Branch) Rules of Procedure requires copies of all the respondent's evidence to be received by the applicant and the Branch not less than 7 days before the hearing. The landlord uploaded evidence in response to the tenant's application only 4 days prior to the hearing. The landlord acknowledged in the hearing that he did not serve a copy of this evidence on the tenants. The landlord's evidence was not accepted or considered in this decision.

Issues

Are the tenants entitled to a return of all or a portion of the security deposit, including double the amount?

Background and Evidence

The tenancy began on July 1, 2018 and ended on September 1, 2019. The tenants testified that they paid a security deposit of \$675.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that as per the tenancy agreement only \$650.00 was paid.

The tenants testified that they paid the outstanding \$25.00 with the first months rent. The landlord disputed this and testified that he has no record of such payment.

The tenants are seeking double the security deposit arguing that the landlord failed to return the security deposit within 15 days of the date the landlord received the tenants forwarding address in writing. The tenant provided a registered mail receipt and a letter dated September 4, 2019 as proof of service of a forwarding address. The landlord acknowledged receipt of the forwarding address on September 9, 2019.

The landlord testified that he returned the tenants security deposit in the agreed upon amount of \$625.00 on September 16, 2019 via e-transfer to the tenants' mobile number. The landlord confirmed that as of the hearing date, the funds have not been accepted by the tenants and remain in his account. The landlord submits that the tenants request for return of the security deposit indicates it could be returned by mail or e-transfer.

The tenants dispute receiving any notification of an e-transfer from the landlord. The tenants acknowledged coming to an agreement with the landlord to return an amount of \$625.00. The tenants submit the landlord made no attempt to communicate with the tenants regarding obtaining an e-mail address and in either event he had their e-mail address from previous communication.

Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

I find the tenants did provide a forwarding address in writing to the landlord. The tenants' security deposit was not refunded within fifteen days of the end of the tenancy or the date a forwarding address was provided as required by section 38 of the Act. The landlord did not have written authorization to retain the security deposit or file an application to claim against the deposit within fifteen days; therefore, the doubling provisions of section 38 apply.

As I could not rely on the landlord's evidence submissions, I find the landlord provided insufficient evidence that he attempted to send an e-transfer to the tenants via text message on September 19, 2019. In either event, there is no dispute that this transfer was not received by the tenants. The landlord should have either obtained an e-mail address from the tenants or sent the agreed upon amount by mail to the forwarding address provided by the tenants.

The tenants failed to provide evidence in support of their claim that they paid a security deposit of \$675.00. Therefore, I find the security deposit amount paid to be \$650.00.

I allow the tenants claim for return of the security deposit and award an amount of \$1250.00, which is double the agreed upon amount of 625.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$1250.00. Should the landlord 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: November 12, 2019

Residential Tenancy Branch