



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WEDGEWOOD MANOR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The tenants applied for monetary order for the return of double their security deposit under the Act and to recover the cost of the filing fee.

The tenants JB and EC (tenants) attended the teleconference hearing and were affirmed. The hearing process was explained to the tenants and the tenants provided affirmed testimony. The tenants were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

As an agent for the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated September 24, 2019 (Notice of Hearing), the application and documentary evidence were considered. The tenants provided affirmed testimony that the Notice of Hearing, application and documentary evidence were served on the landlord by email, which was permitted based on an application for substituted service by the tenants. A decision dated October 4, 2019 was issued, which approved substituted service via email (sub-service decision), which should be read in conjunction with this decision. A copy of the email sent by the tenants and the attachments was submitted in evidence. Based on the evidence before me and considering the sub-service order, I find the landlord was sufficiently served as required under the Act. As a result, I find this matter is undisputed by the landlord and the hearing proceeded without an agent for the landlord present.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matter

The tenants confirmed their email address and the agent for the landlord's email address during the hearing. The tenants were advised that the decision would be emailed to both parties. Any resulting monetary order will be sent by email to the tenants only for service on the landlord.

Issues to be Decided

- Are the tenants entitled to the return of double their security deposit under the Act?
- Are the tenants entitled to the return of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenants paid a security deposit of \$697.50 in June 2017. The monthly rent was \$1,395.00 per month and due on the first day of each month. The tenants vacated the rental unit on August 1, 2019.

The tenants testified that they provided their written forwarding address to the landlord both by registered mail and by email. The service by email was once the sub-service order was granted. The sub-service order also states:

I order that documents served in this manner have been sufficiently served to the landlord for the purposes of the *Act*, three days after the date that the email is sent by the tenants to the landlord.

As the email submitted in evidence supports that the landlord was served on October 4, 2019, I find that the landlord was served as of October 7, 2019. The tenants stated that the landlord has not returned any portion of their security deposit. The tenants testified that the agent JK sent them an email indicating that that they were issued a cheque; however, the tenants have never received a cheque from the landlord and are now seeking double the return of their security deposit plus the filing fee.

Analysis

Based on the above, the undisputed documentary evidence and the undisputed testimony of the tenants, and on a balance of probabilities, I find the following.

Firstly, there was no evidence to show that the tenants had agreed, in writing, that the landlord could retain any portion of the security deposit, which has accrued no interest to date. There was also no evidence to show that the landlord had applied for dispute resolution within 15 days of the end of the tenancy or receipt of the forwarding address of the tenants, to retain a portion of the security deposit. Furthermore, I am satisfied that the landlord was served in two methods with the written forwarding address, by registered mail and by email via the authority stated in the sub-service decision.

For the sake of simplicity, I will use the October 4, 2019 email date in which the landlord is deemed served three days after the email was sent, with the written forwarding address for the tenants. Therefore, I find the landlord breached section 38 of the Act by failing to return the tenants \$697.50 security deposit no later than 15 days after October 7, 2019 or at the very least, apply for dispute resolution claiming towards the security deposit.

The security deposit is held in trust for the tenants by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an arbitrator, or the written agreement of the tenants. In the matter before me, I find the landlord did not have any authority under the Act to keep any portion of the security deposit and did not return the security deposit to the tenants within 15 days of October 7, 2019 as required by the Act.

Section 38(6) of the Act provides that if a landlord does not comply with section 38(1), the landlord must pay the tenants **double** the amount of the security deposit. The legislation does not provide any flexibility on this issue. As a result, I find the tenants have met the burden of proof and that the landlord owes the tenants **\$1,395.00**, which is double the tenants' \$697.50 security deposit.

As the tenants' application was fully successful, I grant the tenants **\$100.00** for the filing fee pursuant to section 72 of the Act.

Given the above, I grant the tenants monetary order pursuant to section 67 of the Act in the amount of **\$1,495.00**. This amount is comprised of \$1,395.00 for the double security deposit and the \$100.00 filing fee.

Conclusion

The tenants' application is fully successful.

I caution the landlord not to violate section 38 of the Act in the future.

The tenants are granted a monetary order in the amount of \$1,495.00 as indicated above. The monetary order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to the parties. The monetary order will be emailed to the tenants only for service on the landlord.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 20, 2019

Residential Tenancy Branch