



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38, including double the amount;
- authorization to recover the filing fee for this application pursuant to section 72.

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. No issues were raised with respect to the service of the application and respective evidence submissions.

During the hearing, the tenant withdrew the portion of the claim requesting compensation for damage or loss due to the landlord allegedly restricting access to the unit and seizing the tenant's personal property. This portion of the tenant's application was not addressed in this hearing and the tenant is at liberty to reapply for these claims.

Issues

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

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

Background and Evidence

The tenancy began on November 1, 2018. In a previous decision dated March 25, 2019, the landlord was granted an order of possession for cause. The tenants applied for a review of the decision but on April 4, 2019 the tenants review application was dismissed, and the original decision was confirmed. The landlord claims the tenants abandoned the unit on March 30, 2019. The tenant claims their access keys to the unit were disabled on April 1, 2019 prior to receiving the review outcome. In either event, it was not disputed that the tenancy ended around this time. The tenants paid a security deposit of \$1375.00 at the start of the tenancy which the landlord continues to hold.

The tenant is claiming 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 letter dated May 20, 2019 as proof of service of a forwarding address as well as e-mail correspondence with the landlord confirming receipt.

The landlord acknowledged receipt of the forwarding address sometime in June 2019.

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.

I allow the tenants' claim for return of the security deposit and award an amount of \$2750.00, which is double the original security deposit of \$1375.00.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of \$2850.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of \$2850.00. 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: December 23, 2019

Residential Tenancy Branch