



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD, FFT

Introduction

On September 4, 2019, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") for the Landlords to return of all or part of the pet damage deposit or security deposit, and to recover the filing fee for the Application.

The Tenant appeared at the hearing; however, the Landlords did not. The Tenant provided affirmed testimony that she served both Landlords with the Notice of Hearing using Canada Post Registered Mail sent on September 5, 2019. The Tenant testified that she sent the Notice to the service address provided by the Landlords. The Tenant provided the Registered Mail tracking numbers as proof of service. The Tenant testified that the mail was returned to her as unclaimed.

I find that that the Notice of Hearing documents were served to the Landlords in accordance with sections 89 and 90 of the Act. The Notice of Hearing is deemed to have been received by the Landlords on September 10, 2019, the fifth day after it was mailed.

The hearing process was explained, and the Tenant was asked if she had any questions. The Tenant provided affirmed testimony and was 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

- Is the Tenant entitled to the return of double the security deposit?

Background and Evidence

The Tenant testified that the tenancy began in June 2015, on a month to month basis. Rent in the amount of \$2,800.00 was due each month. The Tenant paid the Landlord a security deposit of \$1,400.00. The Tenant testified that she moved out of the rental unit on January 31, 2019.

The Tenant testified that the Landlords did not return the security deposit to her after the tenancy ended.

The Tenant testified that there was no written agreement that the Landlords could retain any amount of the security deposit.

The Tenant testified that she provided the Landlords with their forwarding address in writing by registered mail sent to the Landlord on March 1, 2019.

The Tenant testified that she contacted the Landlord on a number of occasions after the tenancy ended inquiring about the return of the security deposit, and the Landlord told her that the rental unit was not left to the Landlords standard.

The Tenant is seeking a monetary order in the amount of \$2,800.00 which is double the security deposit.

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.

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 tenancy ended when the Tenant moved out of the rental unit on January 31, 2019. I find that the Tenant provided her forwarding address to the Landlords on March 6, 2019. There is no evidence before me that the Landlords applied for dispute resolution within 15 days of receiving the Tenant's forwarding address. I find that there was no written agreement that the Landlords could retain 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 Tenant double the amount of the security deposit.

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

I order the Landlords to pay the Tenants the amount of \$2,900.00. I grant the Tenant a monetary order in the amount of \$2,900.00. 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 the security deposit to the Tenant in accordance with the legislation.

The Tenant is granted double the amount of the security deposit. I grant the Tenant a monetary order in the amount of \$2,900.00.

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: January 02, 2020

Residential Tenancy Branch