



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On September 3, 2019, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") for the Landlord 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 Landlord did not. The Tenant provided affirmed testimony that he served the Landlord with the Notice of Hearing using Canada Post Registered Mail sent on September 12, 2019. The Tenant provided the Registered Mail receipt and tracking number as proof of service.

I find that that the Notice of Hearing was served to the Landlord in accordance with sections 89 and 90 of the Act and the Notice of Hearing is deemed to have been received by the Landlords on September 17, 2019, the fifth day after it was mailed.

The hearing process was explained, and the Tenant was asked if he had any questions. The Tenant provided affirmed testimony and was provided the opportunity to present 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?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The Tenant testified that the tenancy began in August 2016 as a one-year fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$1,160.00 was due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$544.00.

The Tenant testified that the tenancy ended on September 1, 2019.

The Tenant testified that the Landlord did not return the security deposit to him after the tenancy ended. The Tenant testified that there was no written agreement that the Landlord could retain any amount of the security deposit.

The Tenant testified that he provided the Landlord with his forwarding address in writing on August 27, 2019 using email. The Tenant testified that he also provided the Landlord with his forwarding address using registered mail sent to the Landlord on September 12, 2019. The Tenant provided a document dated August 27, 2019 containing the forwarding address of the Tenant.

The Tenant submitted that he believes the Landlord wanted to keep the deposit towards payment of a bill.

The Tenant is seeking a monetary order in the amount of \$1,088.00.

Analysis

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 or pet damage 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.

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

I find that the tenancy ended on September 1, 2019. I find that the Tenant provided his forwarding address to the Landlord on September 17, 2019, the fifth day after it was mailed.

There is no evidence before me that the Landlord applied for dispute resolution within 15 days of receiving the Tenant's forwarding address. I find that there was no written agreement from the Tenant that the Landlord could retain the security deposit.

If the Landlord wanted to keep the security deposit towards payment of a bill, the Landlord was required to make application for dispute resolution.

I find that the Landlord breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlord 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 Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I order the Landlord to pay the Tenant the amount of \$1,188.00. I grant the Tenant a monetary order in the amount of \$1,188.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord 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 Tenants a monetary order in the amount of \$1,188.00.

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 13, 2020

Residential Tenancy Branch