



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LTD PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

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

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenants and the landlord's site manager attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present during the hearing, service of the landlord's notice of application for dispute resolution was confirmed, in accordance with section 89 of the *Act*.

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began at the end of February 2019 and ended on July 26, 2019. Monthly rent in the amount of \$1,950.00 was payable on the first day of each month. A security deposit of \$975.00 was paid by the tenants to the landlord.

The tenants testified that they personally provided the site manager with their forwarding address on July 26, 2019. The site manager testified that she did not know on what date the tenants' forwarding address was received but confirmed that it was received.

The tenants testified that they found new tenants to move into the subject rental property who moved in on July 26, 2019. This testimony was not disputed by the site manager.

The site manager testified that a cheque in the amount of \$675.00 was sent to the tenants on August 13, 2019 and a cheque in the amount of \$350.00 was sent to the tenants on November 25, 2019.

The tenants confirmed receipt of the above cheques but testified that the August 13, 2019 cheque does not state their correct last name and so they cannot cash it. The tenants testified that the November 25, 2019 cheque states their correct last name but that they did not cash in case cashing it would jeopardize their claim for double their security deposit.

The landlord did not file an application with the Residential Tenancy Branch to retain any portion of the tenants' security deposit.

Analysis

Section 38 of the Act requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit.

In this case, the landlord attempted to return \$625.00 on August 13, 2019, 18 days after the tenancy ended and the provision of the tenants' forwarding address in writing. The November 25, 2019 cheque was provided to the tenants nearly four months after the tenancy ended and the provision of the tenants' forwarding address in writing. Therefore, pursuant to section 38 of the Act, the tenants are entitled to receive double their security deposit in the amount of \$1,950.00.

As the tenants were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

I Order the tenants to destroy the previous cheques received from the landlord.

I issue a Monetary Order to the tenants in the amount of \$2,050.00.

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. 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: January 06, 2020

Residential Tenancy Branch