



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenants served the landlord with the notice of hearing package and the submitted documentary evidence in person on October 24, 2019, with an exception of the tenants' incomplete monetary worksheet and partially signed copy of a tenancy agreement. The landlord disputed that copies of these two documents were not served. The tenants stated that there was not proof of service. As such, these portions of the tenants' evidence shall be excluded from consideration in this hearing based upon insufficient evidence of service as the landlord has argued that no such documents were served. The landlord stated that the tenants were served with all the late documentary evidence via email on March 4, 2020. The tenants confirmed receipt of these documents late as claimed by the landlord. The tenants stated that although received late, no issues exist that prevent them from responding to the documents.

On the notice of hearing package and the remaining submitted documentary evidence, I find that both parties have been sufficiently served and as per section 90 of the Act, both parties are deemed served.

Issue(s) to be Decided

Are the tenants entitled to an order for return of the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenants seek a monetary claim for return of the \$1,535.00 security deposit and the \$100.00 filing fee. Discussions between the parties resulted in the tenant's application being clarified that a monetary claim of \$1,735.00 which consists of:

\$1,535.00	Return of Security Deposit
\$100.00	Recovery of Filing Fee

The tenants stated that there was no signed tenancy agreement, but the landlord argued that there was one. Neither party submitted a copy of a signed tenancy agreement or a partially signed copy of a tenancy agreement, however, both parties confirmed the tenancy began on August 1, 2018 on a fixed term ending on July 31, 2019 and then thereafter on a month-to-month or another fixed term basis. Both parties confirmed the monthly rent was \$3,070.00 payable on the 1st day of each month and a security deposit of \$1,035.00 was paid.

Both parties confirmed the tenancy ended on August 31, 2019 and that the tenants provided their forwarding address via text message. The tenants stated that this occurred on September 17, 2019, but the landlord argued that it occurred on September 23, 2019. The tenants relied upon the submitted copy of a text message dated September 17, 2019. A review of this text message reveals the tenants providing their mailing address on this noted date.

The landlord provided undisputed affirmed testimony that the \$1,535.00 security deposit is still held by the landlord. The landlord also stated that an application for dispute was not filed at any time to dispute the return of the security deposit. The landlord stated that the parties were in dispute on the landlord's claim for damages and the appropriate amount of compensation that the landlord was seeking.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a 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 subsection 38(6) of the Act equivalent to the value of the security and/or pet damage deposit(s).

In this case, I accept the undisputed affirmed evidence of both parties. Both parties confirmed that the tenancy ended on August 31, 2019 and that the tenants provided their forwarding address for return of the \$1,535.00 security deposit on September 17, 2019. The landlord confirmed in his direct testimony that the security deposit was not returned nor has the landlord filed an application to dispute its return as of the date of this hearing. On this basis, I find that the tenants have established a claim for return of the original \$1,535.00 security deposit. As the tenants have been successful, I also order that the tenants are also entitled to recovery of the \$100.00 filing fee.

I also find pursuant to section 38 (6) of the Act, the landlord having failed to comply with section 38 (1) is subject to (6). The landlord is required to pay a monetary award equal to the \$1,535.00 security deposit to the tenants for failing to comply with the Act.

The tenants are entitled to a monetary claim for \$3,170.00.

Conclusion

The tenants are granted a monetary order for \$3,170.00.

This order must be served upon the landlord. 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: March 05, 2020

Residential Tenancy Branch