



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT

Introduction

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

- a monetary order for \$1,550 representing two times the amount of the security deposit and pet damage deposit, pursuant to sections 38 and 62 of the Act; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:42 pm in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 pm. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant testified that the landlord was served the notice of dispute resolution form on November 18, 2019 and supporting evidence package at least 14 days prior to this hearing (she did not state an exact date). She provided a Canada Post tracking number confirming the mailing of the notice of dispute resolution form which is reproduced on the cover of this decision. I find that the landlord was served with these materials in accordance with the Act.

Issues to be Decided

Is the tenant entitled to:

- 1) a monetary order of \$1,550; and
- 2) recover her filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the tenant, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The parties entered into a tenancy agreement starting May 1, 2018. The tenant testified that the landlord did not give her a copy of the tenancy agreement. Monthly rent was \$1,350 and is payable on the first of each month. The tenant provided a copy of her bank statement showing e-transfers in this amount to the landlord's son. The tenant paid the landlord a security deposit of \$675 and a pet damage deposit of \$100 (collectively, the "**Deposits**"). The landlord has not returned the Deposits to the tenant.

The tenancy ended on June 30, 2019. The tenant testified that she sent the landlord a letter containing her forwarding address to the landlord on July 18, 2019. She included a copy of this letter in her evidence.

The tenant testified that she is not aware of an order of the Residential Tenancy Branch which would permit the landlord to retain the Deposits.

Analysis

Section 38(1) of the Act states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the undisputed testimony of the tenant, I find that the tenancy ended on June 30, 2019 and that the tenant provided her forwarding address in writing to the landlord on July 18, 2019.

I find that the landlord has not returned the Deposits to the tenant within 15 days of receiving her forwarding address, or at all.

I find that the landlord has not made an application for dispute resolution claiming against the Deposits within 15 days of receiving the tenant's forwarding address.

Accordingly, I find that the landlord has failed to comply with section 38(1) of the Act.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim against a security or pet damage deposit within the specified timeframe:

- (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The language of section 38(6)(b) is mandatory. As the landlord has failed to comply with section 38(1), I must order that the landlord pay the tenant double the combined amount of the Deposits to the tenant (\$1,550).

As the tenant has been successful in her application, she is entitled to have their filing fee of \$100.00 repaid by the landlord.

Conclusion

Pursuant to sections 38, 62, 65, and 72 of the Act, I order that the landlord pay the tenant \$1,650.

The tenant must serve the landlord with a copy of this decision and enclosed monetary order as soon as possible upon its receipt.

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 31, 2020

Residential Tenancy Branch