



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR, FFT

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 38.1 of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for the return of double the security deposit and the pet damage deposit (the deposits).

The tenant submitted a Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on March 29, 2020, the tenant sent the landlord the Notice of Direct Request Proceeding by registered mail. The tenant provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the landlord is deemed to have been served with the Direct Request Proceeding documents on April 3, 2020, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation for the return of a security deposit and a pet damage deposit pursuant to sections 38 and 67 of the *Act*?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The tenant submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord on June 4, 2017 and the tenant on June 7, 2017, indicating a monthly rent of \$1,150.00, a security deposit of \$575.00, and a pet damage deposit of \$575.00, for a tenancy commencing on July 1, 2017;
- A copy of an e-mail from the tenant to the landlord dated February 1, 2020, providing the forwarding address and requesting the return of the deposits;

- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form (Proof of Service of the Forwarding Address) which indicates that the forwarding address was sent to the landlord by e-mail on February 1, 2020;
- A copy of eight e-mails exchanged between the landlord and the tenant from January 16, 2020 to March 7, 2020; and
- A copy of a Tenant's Monetary Order Worksheet for an Expedited Return of Security Deposit and/or Pet Damage Deposit (the Monetary Order Worksheet) showing the amount of deposits paid by the tenant, the partial reimbursement of \$1,100.00 by the landlord, and stating that the tenancy ended on January 31, 2020.

Analysis

Section 38(1) of the *Act* states that the landlord has fifteen days from the end of tenancy and the date they received the forwarding address to either return the deposit(s) in full or make an application for dispute resolution claiming against the deposit(s).

Section 38(6) of the *Act* states that if the landlord does not return the deposits or file a claim against them within the fifteen days, the landlord must pay the tenant double the amount of the deposit(s).

I have reviewed all documentary evidence and I find that the tenant paid a security deposit in the amount of \$575.00 and a pet damage deposit in the amount of \$575.00, as per the tenancy agreement.

I find that the tenancy ended on January 31, 2020, the date indicated on the Monetary Order Worksheet.

I find the tenant sent the landlord their forwarding address by e-mail, which is not a method of service allowable under section 88 of the *Act*. However, section 71(2)(c) of the *Act* enables me to make an order that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this *Act*.

The tenant has submitted a copy of eight e-mails exchanged between the landlord and the tenant from January 16, 2020 through March 7, 2020, demonstrating that e-mail was regularly used as a method of communication in this tenancy.

For this reason, and in accordance with section 71(1)(c) of the *Act*, I find the landlord is deemed to have been served with the tenant's forwarding address on February 4, 2020, three days after it was e-mailed.

I accept the following declarations made by the tenant on the Monetary Order Worksheet:

- The tenant has not provided consent for the landlord to keep all or part of the deposits;
- There are no outstanding Monetary Orders against the tenant for this tenancy; and
- The tenant has not extinguished their right to the deposits in accordance with sections 24(1) and 36(1) of the *Act*.

I accept the evidence before me that the landlord has failed to return the deposit(s) to the tenant and has not filed an Application for Dispute Resolution requesting to retain the deposit(s) by February 29, 2020, within the fifteen days granted under section 38(1) of the *Act*.

Based on the foregoing, I find that the landlord must pay the tenant double the amount of the withheld security deposit and the pet damage deposit in accordance sections 38(6) of the *Act*.

Therefore, I find that the tenant is entitled to a monetary award in the amount of \$100.00, the amount claimed by the tenant for double the balance of the security deposit and the pet damage deposit, as of the date of this application, March 23, 2020.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the tenant a Monetary Order in the amount of \$200.00 for the return of double the balance of the security deposit and the pet damage deposit and for the recovery of the filing fee for this application. The tenant is 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: April 07, 2020

Residential Tenancy Branch