



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 tenants for a Monetary Order for the return of the security deposit and the pet damage deposit (the deposits).

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on April 20, 2020, the tenants sent the landlord the Notice of Direct Request Proceeding by registered mail. The tenants provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the tenants 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 25, 2020, the fifth day after their registered mailing.

Issue(s) to be Decided

Are the tenants 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*?

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

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The tenants submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on August 7, 2019, indicating a monthly rent of \$2,500.00, a security deposit of \$1,250.00, and a pet damage deposit of \$250.00, for a tenancy commencing on August 11, 2019;
- A copy of an Interac e-Transfer dated August 11, 2019, for \$4,000.00 paid by the tenants for August 2019 rent, a security deposit, and a pet damage deposit;
- A copy of a Mutual Agreement to End a Tenancy which was signed by the landlord and the tenants on February 7, 2020, indicating the tenancy ended as of February 1, 2020;
- A copy of a letter from the tenants to the landlord dated February 12, 2020, providing the forwarding address;
- A copy of a witnessed 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 placed in the landlord's mailbox at 10:50 pm on February 12, 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 tenants and indicating that the tenancy ended on February 1, 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 tenants double the amount of the deposit(s).

I have reviewed all documentary evidence and I find that the tenants paid a security deposit in the amount of \$1,250.00 and a pet damage deposit in the amount of \$250.00, as per the tenancy agreement and the Interac e-Transfer.

I find that the tenancy ended on February 1, 2020, the date indicated on the Mutual Agreement to End a Tenancy.

In accordance with sections 88 and 90 of the *Act*, I find that the landlord was deemed served with the forwarding address on February 15, 2020, three days after it was placed in the mailbox.

I accept the following declarations made by the tenants 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 tenants and has not filed an Application for Dispute Resolution requesting to retain the deposit(s) by March 1, 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 tenants double the amount of the security deposit and the pet damage deposit in accordance sections 38(6) of the *Act*.

Therefore, I find that the tenants are entitled to a monetary award in the amount of \$3,000.00, the amount claimed by the tenants for double the security deposit and the pet damage deposit, as of the date of this application, April 19, 2020.

I note that the only monetary award available to tenants by way of the Direct Request process is for the return of a security deposit and pet damage deposit. As the tenants have also sought a monetary award for matters relating to an overpayment of rent in the amount of \$806.45, I would not be able to consider this aspect of the tenants' claim through the Direct Request process.

As the tenants were partially successful in this application, I find that the tenants are 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 tenants a Monetary Order in the amount of \$3,100.00 for the return of double the security deposit and the pet damage deposit and for the recovery of the filing fee for this application. 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.

I dismiss the tenant's application for a Monetary Order for an overpayment of rent with leave to reapply.

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 27, 2020

Residential Tenancy Branch