



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-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 the security deposit (the deposit).

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on April 28, 2020, the tenant sent the landlord the Notice of Direct Request Proceeding by e-mail.

The tenant provided a copy of the outgoing e-mail containing attachments of the supporting documents and a copy of a reply e-mail from the landlord dated April 28, 2020, to confirm this service.

The Residential Tenancy Branch's Director's Order on e-mail service dated March 30, 2020 provides that a document required to be sent in accordance with sections 88 and 89 of the *Act* may be sent by e-mail and is considered received if the person replies to the e-mail.

Based on the written submissions of the tenant and in accordance with the Director's Order, I find that the landlord has been served with the Direct Request Proceeding documents on April 28, 2020, the day of the reply e-mail.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation for the return of a security 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

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 tenant submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on October 1, 2017, indicating a monthly rent of \$1,850.00 and a security deposit of \$825.00, for a tenancy commencing on May 1, 2015;
- A copy of an e-mail from the tenant to the landlord dated March 16, 2020, providing the forwarding address and requesting the return of the deposit and a copy of a reply e-mail from the landlord also dated March 16, 2020;
- 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 at 12:41 pm on March 16, 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 deposit paid by the tenant and indicating the tenancy ended on December 15, 2019.

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 deposit(s) 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 \$825.00 as per the tenancy agreement.

I accept the tenant's statement on the Monetary Order Worksheet that the tenancy ended on December 15, 2019.

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*.

I find that the tenant sent their forwarding address to the landlord by e-mail, which is not a method of service permitted under section 88 of the *Act*. However, I am satisfied that the landlord received the tenant's forwarding address as the landlord replied to the tenant's e-mail the same day.

For this reason, and in accordance with section 71(2)(c) of the *Act*, I find that the landlord has been served with the forwarding address on March 16, 2020.

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 deposit;
- There are no outstanding Monetary Orders against the tenant for this tenancy; and
- The tenant has not extinguished their right to the deposit 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 to the tenant and has not filed an Application for Dispute Resolution requesting to retain the deposit by March 31, 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 security 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 \$1,650.00, double the amount claimed by the tenant for the security deposit, as of the date of this application, April 27, 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 \$1,750.00 for the return of double the security 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 29, 2020