



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on November 5, 2019 seeking an Order granting a refund of the security deposit, as well as a recovery of the filing fee for the hearing process. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on March 16, 2020.

The tenant was the only participant in attendance. In the conference call hearing I explained the process and provided them the opportunity to ask questions.

The tenant gave the landlord notice of this hearing by way of registered mail. The landlord subsequently submitted evidence. From this evidence, I am satisfied the landlord knew of the dispute issue, and the date and time of the hearing as scheduled. The tenant spoke to the landlord’s submitted evidence in the hearing.

Issue(s) to be Decided

Is the tenant entitled to an Order granting a refund of the security deposit pursuant to section 38(1)(c) 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 evidence and written submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The tenant submitted documentary evidence and provided oral testimony during the hearing. The relevant portions are as follows:

- The tenancy agreement specified a rental amount of \$2,400 rent per month, payable on the first day of the month
- The tenancy agreement was signed on June 10, 2018, with the move-in date being July 15, 2018 – at that time, the tenant paid the security deposit amount of \$1,200.00 to the landlord;
- the move out/end of tenancy date was September 20, 2019
- the closing inspection meeting took place on September 24, 2019
- at that meeting, the tenant gave their forwarding address to the landlord – a neighbour witnessed this
- by October 30, 2019 the tenant did not receive the security deposit amount, and by November 5, 2019 had applied for dispute resolution.

The tenant provided documentary evidence and spoke to the issues regarding the hardwood floor in their oral testimony. The written statement from the landlord addressed that same issue. This included an estimate for repairs from a flooring company that handles hardwood flooring.

The tenant addressed the evidence of an e-transfer sent November 12, 2019 to them by the landlord, for \$1,200.00. The tenant could not explain why this transaction occurred. On a copy of the document provided, this is marked “completed” on the receipt.

Analysis

The *Act* section 38(1) states that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant’s forwarding address in writing, the landlord must repay any security or pet damage deposit to the tenant or make an Application for Dispute Resolution for a claim against any deposit.

Further, section 38(6) of the *Act* provides that if a landlord does not comply with subsection (1), a landlord must pay the tenant double the amount of the security and pet damage deposit.

I find as fact, based on their undisputed evidence and testimony, the tenant gave their forwarding address to the landlord as provided for in their evidence: they handed it to the landlord personally, as necessary, upon the condition inspection meeting on September 24, 2019. A neighbour witnessed this. A copy of the handwritten letter is in the evidence. The landlord did not apply for dispute resolution to claim against these deposits within 15 days of receiving this forwarding address.

On this point, I find the evidence of the tenant is undisputed. I am satisfied that the tenant’s new forwarding address was within the landlord’s knowledge, as necessary, by September 24, 2019. By not returning the security deposit, and not applying for dispute resolution on a claim against the deposit, I find the landlord’s actions constitute a breach of section 38 of the *Act*. The landlord must pay the tenant double the amount of the security deposit, as per section 38(6) of the *Act*.

There is evidence of a \$1,200.00 e-transfer of money to the tenant on November 20, 2019. The message attached states: "Hi. . . . this is you [sic] damage deposit". The tenant did not dispute this. Given this transaction occurred, I factor this in to my calculation of the monetary order to the tenant in this matter.

The *Act* section 72 grants me the authority to order the repayment of a fee for the Application. As the tenant was successful in their claim, I find they are entitled to recover the filing fee from the landlord.

Conclusion

I order the landlord to pay the tenant the amount of \$1,300.00. This is the remainder of double the security deposit amount of \$1,200.00. This amount also includes the \$100.00 filing fee. I grant the tenant a monetary order for this amount. This monetary order may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: April 6, 2020

Residential Tenancy Branch