



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL, MNSD, FFT

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on December 16, 2019 for:

1. A Monetary Order for damages to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenants applied on December 17, 2019 for:

1. An Order for the return of double the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord did not attend the hearing while the Tenants appeared and were ready to respond to the Landlord’s claims. As the Landlord did not attend the hearing to pursue its application, I dismiss the Landlord’s application. The Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

I accept the Tenants’ evidence that the Landlord was served with the application for dispute resolution, notice of hearing and evidence (the “Materials”) by express post mail on December 20, 2019 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the

evidence of mail service I find that the Landlord is deemed to have received the Materials on December 25, 2019 regardless of not collecting the mail.

Issue(s) to be Decided

Are the Tenants entitled to return of double the security deposit?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The tenancy under written agreement started on February 1, 2019 and ended November 30, 2019. Rent of \$2,350.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,200.00 as a security deposit. The Tenants provided their forwarding address by email on December 1, 2019 and the Landlord replied to this email. The Parties usual method of communication was by email. The Landlord has not been returned their security deposit. It is noted that the Landlord did not provide any evidence to support its damage claim and the application only notes "damage to furnishings beyond wear and tear".

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Although the Landlord made an application to claim against the security deposit as the Landlord did not appear to pursue this claim and noting that the Landlord provided no supporting evidence and virtually no particulars for its damage claim, I find that the application was frivolous and an abuse of the dispute resolution process. In these circumstances and as the Landlord did not return the security deposit, I find that the Landlord must now pay the Tenants double the security deposit plus zero interest of **\$2,400.00**. As the Tenants'

claim has been successful, I find that the Tenants are also entitled to recovery of the \$100.00 filing fee for a total entitlement of **\$2,500.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,500.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: May 21, 2020

Residential Tenancy Branch