



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hollyburn Properties Limited
and [tenant name suppressed to protect privacy]

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 tenants for a Monetary Order for the return of the doubled portion of the security deposit.

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on May 22, 2020, the tenants sent the landlord the Notice of Direct Request Proceeding by e-mail. The tenants provided a copy of the outgoing e-mail 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 if the sender and recipient e-mail addresses have been routinely used for tenancy matters.

The tenants submitted a copy of seven e-mails exchanged on May 19, 2020, showing that the landlord and tenants have used e-mail to communicate about tenancy issues.

Based on the written submissions of the tenants and in accordance with the Director's Order, I find that the landlord is deemed to have been served with the Direct Request Proceeding documents on May 25, 2020, the third day after their e-mailing.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation for double the security 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 October 14, 2018, indicating a monthly rent of \$1,850.00 and a security deposit of \$925.00, for a tenancy commencing on January 1, 2019;
- A copy of a notice to vacate which was signed by one of the tenants and the landlord on March 29, 2020, indicating the tenancy would end on April 30, 2020 and providing the tenants' forwarding address;
- 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 given to the landlord in person on the notice to vacate on March 29, 2020;
- A copy of an envelope containing the return of the security deposit, postmarked May 13, 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 tenants and stating the tenants did not receive the return of the deposit until May 20, 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 repay the deposit(s) in full or make an application for dispute resolution claiming against the deposit(s).

Section 38(8) of the *Act* states that the landlord may repay the deposit(s) by sending it by regular or registered mail to the tenant's forwarding address.

Policy Guideline #17 on Security Deposits and Set-off states the landlord may return the deposit within the fifteen days.

The tenants claim that, regardless of the date the landlord mailed the security deposit, since they did not receive it within the fifteen days, the landlord should be obligated to pay them the doubled amount.

I note that the wording of the *Act* and the Policy Guideline states that the landlord must repay or return the deposit. The *Act* goes on to state that the landlord may repay the deposit by sending it by regular mail.

The *Act* does not specify the tenants must have received the deposit within the fifteen days, or that the landlord must ensure the tenants have been repaid within the fifteen days.

For this reason, I find that taking steps to return the deposit, such as placing the cheque in the mail, within the fifteen days satisfies the landlord's requirement under section 38 the *Act*.

Therefore, I find that the tenants are not entitled to double the amount of the deposit. The tenants' application for a Monetary Order for the doubled portion of the security deposit is dismissed without leave to reapply.

As the tenants were not successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the tenants' application for a Monetary Order for the doubled security deposit without leave to reapply.

I dismiss the tenants' application to recover the filing fee paid for this application without 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: May 25, 2020

Residential Tenancy Branch