



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSD, FFT**

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of the security and pet damage deposit pursuant to section 38; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that they served the landlord with their notice of application and evidence by registered mail sent to the landlord's address for service on December 19, 2019. The tenant submitted a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the landlord is deemed served with the tenants' materials on December 24, 2019, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

Issue(s) to be Decided

Are the tenants entitled to a return of the security deposit?

Are the tenants entitled to recover their filing fee from the landlord?

Background and Evidence

This tenancy began in October 2018 and ended October 31, 2019. Monthly rent was \$1,490.00. A security deposit of \$745.00 and pet damage deposit of \$745.00 were paid at the start of the tenancy. The tenants provided their forwarding address on the move-out condition inspection report dated October 31, 2019. The tenants did not give written authorization that any amount could be deducted from the deposits for this tenancy.

The landlord returned the amount of \$965.15 on December 19, 2019. The tenants gave evidence that they agree to a deduction of \$128.33 from the deposits for utilities in accordance with the written tenancy agreement. The tenants submit that they do not agree to any other deductions.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security and pet damage deposit in full or file for dispute resolution for authorization to retain the deposits 15 days after the later of the end of a tenancy and or upon receipt of the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security and pet damage deposit.

I accept the undisputed evidence of the tenants that this tenancy ended on October 31, 2019 and the tenants provided a forwarding address in writing on that date. I accept the evidence that the landlord failed to return the full amount of the deposits within 15 days of that date in accordance with section 38(1)(c) of the *Act* nor did they file an application for authorization to retain the deposit.

As the tenant gave evidence that they agree to a deduction of \$128.23 I find that amount may be deducted from the deposits.

While the landlord did return a portion of the deposits, I find that the payment was not made until December 19, 2019, well after the 15 days provided under the *Act*.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenants' deposits in full within the required 15 days. I accept the tenants' evidence that they have not waived the right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in

accordance with section 38(6) of the *Act*, I find that the tenants are entitled to an \$2,723.54 Monetary Order, double the value of the security and pet damage deposit withheld by the landlord without authorization. ($\$745 + \$745 \text{ less authorized } \$128.23 = \$1,361.77 \times 2 \Rightarrow \$2,723.54$) No interest is payable over this period.

The tenants testified that they have received the amount of \$965.15 from the landlord and the monetary award is reduced by that amount accordingly.

As the tenants were successful in their application, they are also entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$1,858.39 against the landlord allowing for a return of the deposits and filing fee less the amount already paid or agreed upon by the tenants. The tenants are provided with a Monetary 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: May 14, 2020

Residential Tenancy Branch