



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

On April 24, 2020, the Tenants applied for a Direct Request proceeding seeking a Monetary Order for a return of the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “Act”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

On April 28, 2020, this Application was set down for a Dispute Resolution proceeding on June 2, 2020 at 9:30 AM.

Both the Tenant and the Landlord attended the hearing. All in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing and evidence package was served to the Landlord by email on April 27, 2020 and the Landlord confirmed receipt of this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing and evidence package.

The Landlord advised that she did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a return of double the security deposit?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the most current tenancy started on May 1, 2018 and ended when the Tenants gave up vacant possession of the rental unit on March 1, 2020. Rent was established at \$700.00 per month and was due on the first day of each month. A security deposit of \$350.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties also agreed that the Tenants provided their forwarding address by text on March 1, 2020. In addition, the Tenants sent their forwarding address in writing to the Landlord by registered mail on April 3, 2020. While the Landlord was not sure of the date she received this registered mail package, she confirmed that she did receive it.

The Landlord confirmed that she was to blame for holding onto the deposit and she stated that she has neither returned the deposit in full, nor has she made an Application through the Residential Tenancy Branch to claim against the deposit.

As the Landlord has not complied with the *Act*, the Tenant is seeking a return of double the security deposit pursuant to Section 38 of the *Act*.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

When reviewing the evidence before me, the undisputed evidence is that the Tenants provided a forwarding address in writing on April 3, 2020 and that the tenancy ended on March 1, 2020. I find it important to note that Section 38 of the *Act* clearly outlines that from the later point of a forwarding address in writing being provided or from when the tenancy ends, the Landlord must either return the deposit in full **or** make an application to claim against the deposit. There is no provision in the *Act* which allows the Landlord to retain the deposit without the Tenants' written consent.

As the Tenants did not provide written authorization for the Landlord to keep any amount of the deposit, and as the Landlord did not return the deposit in full or make an Application to keep the deposit within 15 days of being deemed to receive the Tenants' forwarding address in writing of April 3, 2020, I find that the Landlord illegally withheld the deposit contrary to the *Act*, and did not comply with the requirements of Section 38.

Consequently, I am satisfied that the Tenants have substantiated a monetary award amounting to double the original security deposit. Under these provisions, I grant the Tenants a monetary award in the amount of **\$700.00**.

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$700.00** 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: June 2, 2020

Residential Tenancy Branch