



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

On January 9, 2020, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for the Landlord to return of all or part of the security deposit, and to recover the filing fee for the Application.

The matter was scheduled as a teleconference hearing. The Tenants appeared at the hearing; however. The Landlord did not.

The Tenants provided affirmed testimony that they served the Landlord with the Notice of Dispute Resolution Proceeding using Canada Post Registered Mail sent on January 17, 2020. The Tenants testified that the registered mail was picked up by the Landlord on January 23, 2020. The Tenants testified that they heard from the Landlord via email after the Landlord received the notice of hearing. I find that that the Notice of Dispute Resolution Proceeding was served to the Landlord in accordance with sections 89 and 90 of the Act and the Notice is deemed to have been received by the Landlord on the fifth day after it was mailed.

The hearing proceeded and the Tenants were asked if they had any questions. The Tenants provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

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

- Are the Tenants entitled to recover the cost of the filing fee?

Background and Evidence

The Tenants testified that the tenancy began on August 1, 2015 as a one-year fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$1,650.00 was due to be paid by the first day of each month. The Tenants paid the Landlord a security deposit of \$825.00. The tenancy ended on December 15, 2019.

The Tenants testified that the Landlord did not return the security deposit to them after the tenancy ended.

The Tenants testified that there was no written agreement that the Landlord could retain any amount of the security deposit.

The Tenants testified that the Tenants provided the Landlord with their forwarding address in writing within the condition inspection report and in a letter to the Landlord dated October 11, 2019. The Tenants provided copies of the documents.

Analysis

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the tenants forwarding address in writing, the landlord must repay any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38 (6) of the Act provides that if a landlord does not comply with subsection (1), the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the Tenants provided their forwarding address to the Landlords on October 11, 2019 and again on December 15, 2019. There is no evidence before me that the Landlord applied for dispute resolution within 15 days of the tenancy ending. I find that there was no agreement that the Landlords could retain the security deposit.

I find that the Landlord breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlord must pay the Tenants double the amount of the security deposit. I order the Landlord to pay the Tenants the amount of \$1,650.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenants' paid to make application for dispute resolution.

I grant the Tenants a monetary order in the amount of \$1,750.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord failed to return the security deposit to the Tenants in accordance with the legislation.

The Tenants are granted double the amount of the security deposit and recovery of the filing fee. I grant the Tenants a monetary order in the amount of \$1,750.00.

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 04, 2020

Residential Tenancy Branch