



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 an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38 of the *Act*.
- An order requiring the landlord to reimburse the tenants for the filing fee pursuant to section 72 of the *Act*.

Both tenants attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant AS provided affirmed testimony that he served the landlord with the Notice of hearing and application for Dispute Resolution by registered mail sent on January 24, 2020 and the letter was returned by Canada Post on February 18, 2020. A copy of the letter is submitted in evidence. I find that the landlord was deemed to be served in accordance with section 90 of the *Act*.

The tenants provided the Canada Post Tracking Numbers in support of service which is listed on the cover page of this decision.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional ten minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenants and I had called into the hearing. I confirmed the correct call-in number and participant codes for the landlord had been provided.

Rule of Procedure 7.3 states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. I proceeded with this hearing.

Issues to be Decided

Are the tenants entitled to the following?

- an order for the landlord to return the security deposit pursuant to section 38 of the Act.
- an order requiring the landlord to reimburse the tenants for the filing fee pursuant to section 72 of the Act.

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the tenants, not all details of her respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and my findings are set out below.

The tenant AS testified that this tenancy began on April 15, 2019 and ended on January 1, 2020. Monthly rent in the amount of \$2,500.00 was payable each month. A security deposit of \$1,250.00 was paid by the tenants to the landlord which is held in Trust by the landlord. A written tenancy agreement was signed by both parties.

Tenant AS affirmed that the landlord served a Two Month Notice to End Tenancy on October 31, 2019. The tenant believed that the landlord wanted to move back into the rental unit due to matrimonial problems.

Both tenants affirmed that the landlord did not carry out a move-in or move-out inspection report of the rental property.

The tenant AS testified that he sent the landlord text messages on December 28, 2019, January 1, and January 14, 2020 requesting their security deposit back. The landlord replied back on December 29, 2019 that he would e-transfer the security deposit.

The tenant AS affirmed they also sent their forwarding address on January 24, 2020 by registered mail with the Dispute Resolution and evidentiary documents. A copy of the registered mailing was submitted in evidence. The tenant AS testified that the landlord has ignored their calls, texts and had not returned the security deposit or filed an application to retain it.

The tenant JLA confirmed that the testimony given by tenant AS was true and precise and did not wish to provide any further testimony.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and 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 deposit.

However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit. The tenant AS testified that he has not authorized the landlord to retain any portion of the security deposit.

Section C(3) of Residential Tenancy Branch Policy Guideline 17 states that unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing.

Based on the testimony of the tenants, I find that the landlord was served with the tenants' forwarding address by registered mail and texts which is the standard practice that the parties undertook to communicate. I find the landlord had 15 days to return the security deposit to the tenants or file an application for Dispute Resolution Proceedings on receipt of the forwarding address on December 28, 2019 and on January 24, 2020.

I find that the landlord did not file an application with the Residential Tenancy Branch to retain the tenants' security deposit within 15 days of receiving the tenants' forwarding address in writing. Therefore, pursuant to section 38 of the *Act* and Residential Tenancy

Branch Policy Guideline 17, the tenants are entitled to receive double their security deposit.

As the tenants were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

A summary of the calculation of the award follows:

ITEM	AMOUNT
Security deposit	\$1,250.00
Doubling of security deposit - section 38(6)	\$1,250.00
Reimbursement of filing fee – section 72	\$100.00
Total due to tenants	\$2,600.00

Conclusion

I grant the tenants a monetary order pursuant to section 38 in the amount of **\$2,600.00** as described above.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file, the order in the Provincial Court (Small Claims) to be 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 11, 2020

Residential Tenancy Branch