



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for the return of the security deposit that the Landlord is holding without cause; and to recover the \$100.00 cost of their Application filing fee.

The Tenant, M.M., appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over ten minutes and was monitored throughout this time. The only person to call into the hearing was the Tenant, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Tenant, M.M.

I explained the hearing process to the Tenant and gave him an opportunity to ask questions about the hearing process. During the hearing the Tenant was given the opportunity to provide his evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure "(Rules)"; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that he served the Landlord with the Notice of Hearing documents by Canada Post registered mail, sent on April 17, 2020. The Tenant provided a Canada Post tracking number as evidence of service. I find that the Landlord was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenant in the absence of the Landlord.

Preliminary and Procedural Matters

The Tenant(s) provided the Parties' email addresses in the Application and confirmed them in the hearing. The Tenant also confirmed his understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Tenant that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which he pointed or directed me in the hearing.

Issue(s) to be Decided

- Are the Tenants entitled to a monetary order, and if so, in what amount?
- Are the Tenants entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Tenant(s) submitted a copy of the tenancy agreement, and in the hearing, the Tenant confirmed that the fixed term tenancy began on February 1, 2020 and ended on March 31, 2020, with a monthly rent of \$3,900.00, due on the first day of each month. The Tenant confirmed that the Tenants paid the Landlord a security deposit of \$1,950.00, and no pet damage deposit.

The Tenant said that the Landlord was away travelling at the start of the tenancy, and that neither he nor an agent conducted an inspection of the condition of the rental unit with the Tenants. As such, the Landlord did not produce a condition inspection report for the Parties.

The Tenant said that he requested the return of the security deposit and provided the Landlord with the Tenants' forwarding address via email and in a registered mail letter sent on April 17, 2020.

The Tenant said the Landlord did not return the Tenants' security deposit at the end of the tenancy, and that he wants a monetary order for the reimbursement of the security deposit for up to as much as the Act deems appropriate in this situation. He said he also wants to be reimbursed for the cost of this hearing.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

I find that the Tenants provided their forwarding address to the Landlord on April 22, 2020, five days after it was mailed to the Landlord, pursuant to section 90 of the Act. Further, I find that the tenancy ended on March 31, 2020.

Section 38(1) of the Act states the following about the connection of these dates to a landlord's requirements surrounding the return of the security deposit:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Landlord was required to return the \$1,950.00 security deposit within fifteen days of April 22, 2020, namely by May 7, 2020, or to apply for dispute resolution to claim against the security deposit, pursuant to section 38(1). The Landlord provided no evidence that he returned any amount of the security deposit or applied to the RTB for dispute resolution, claiming against the security deposit. Therefore, I find the Landlord failed to comply with his obligations under section 38(1).

Section 38(6)(b) states that if a landlord does not comply with section 38(1) that the landlord must pay the tenant double the amount of the security deposit. There is no interest payable on the security deposit.

I, therefore, award the Tenants \$3,900.00 from the Landlord in recovery of double the security deposit, pursuant to section 38(6) of the Act. Given that the Tenants were

successful in their Application, I also award them recovery of the \$100.00 Application filing fee for a total award of \$4,000.00.

Conclusion

The Tenants' claim against the Landlord for return of double the security deposit is successful in the amount of \$4,000.00. The Landlord violated section 38(1) of the Act by not returning the Tenants' security deposit or applying for dispute resolution within 15 days of the later of the end of the tenancy and the Landlord receiving the Tenants' forwarding address. I award the Tenants with double the amount of the \$1,950.00 security deposit pursuant to section 38(6) of the Act, plus recovery of the \$100.00 Application filing fee.

I grant the Tenants a monetary order under section 67 of the Act from the Landlord in the amount of \$4,000.00.

This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 12, 2020

Residential Tenancy Branch