



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on February 19, 2020 seeking a monetary order for the return of the security and pet deposits they paid at the start of a past tenancy. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on June 15, 2020. In the conference call hearing I explained the process and offered the attending party the opportunity to ask questions.

The tenant attended the hearing, and they were provided the opportunity to present oral testimony and make submissions during the hearing. The landlord did not attend the telephone conference call hearing.

To proceed with this hearing, I must be satisfied that the tenant made reasonable attempts to serve the landlord with the Notice of Dispute Resolution for this hearing. This means the tenant must provide proof that the document was served using a method allowed under section 89 of the *Act*, and I must accept that evidence.

The tenant set out how they served this notice by registered mail to the landlord on March 2, 2020. They stated that they received a Canada Post registered mail tracking number, then confirmed that they did not receive the package returned to them in the mail. The address they used was that used for dropping off rent cheques, and is the landlord’s common contact address. The tenant stated that the package they sent to the landlord contained the evidence they intended to rely on for this hearing.

Based on the submissions of the tenant, I accept they served the notice of this hearing in a manner complying with section 89(1)(c) of the *Act*. The hearing thus proceeded in the landlord’s absence.

Issue(s) to be Decided

- Are the tenants entitled to an Order granting a refund of double the amount of the security deposit and pet damage deposit pursuant to section 38 of the *Act*?
- Are the tenants entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all evidence and written submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The tenant submitted documentary evidence and provided oral testimony during the hearing. The relevant portions are as follows:

- The tenancy agreement specified a rental amount of \$975.00 rent per month, payable on the first day of the month
- The tenancy agreement was signed on May 29, 2017 when the tenant moved in – at that time, the tenant paid the security deposit amount of \$487.50 and the pet deposit amount of \$200.00 to the landlord;
- the move out/end of tenancy date was August 29, 2019
- the closing inspection meeting took place on August 29, 2019
- at that meeting, the tenant gave their forwarding address to the landlord
- the tenant did not receive the security deposit amount, and by February 19, 2020 applied for dispute resolution.

The tenant provided a two-page condition inspection report that sets out condition of specific areas of the rental unit, both at “move-in” and “move-out”. The tenant and landlord signed this document on May 19, 2017, and August 29, 2019. The document contains the space: “BALANCE DUE TENANT: \$687.50.” The tenant stated in the hearing that they gave their forwarding address on August 29, 2019 when they signed this document; this address is found on the bottom of page 2.

In the hearing the tenant stated that the landlord was showing the unit in the period prior to their moving out at the end of August 2019. They gave the landlord two months’ notice they were vacating. Neither during the tenancy, nor after their move out did the landlord indicate they were making a claim against the security deposit or intending to keep the money for any reason.

The tenant stated that since the end of tenancy, they tried reaching the landlord many times by phone. As of the date of the hearing, they were not able to speak to the landlord.

Analysis

Section 38(1) of the *Act* provides that a landlord must either: repay a security or pet deposit; or apply for dispute resolution to make a claim against those deposits. This must occur within 15 days after the later of the end of tenancy or the tenant giving a forwarding address.

Section 38(4) provides that a landlord may retain a security deposit or pet deposit if the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. This subsection specifies this written agreement must occur at the end of a tenancy.

Section 38(6) sets out the consequences where the landlord does not comply with the requirements of section 38(1). These are: the landlord may not make a claim against either deposit; and, the landlord must pay double the amount of either deposit, or both.

I find as fact, based on their undisputed evidence and testimony, the tenant gave their forwarding address to the landlord as provided for in their evidence: they gave this to the landlord at the condition inspection meeting on August 29, 2019. A neighbour witnessed this. A copy of the handwritten letter is in the evidence. The landlord did not apply for dispute resolution to claim against these deposits within 15 days of receiving this forwarding address.

On this point, I find the evidence of the tenant is undisputed. I am satisfied that the tenant's new forwarding address was within the landlord's knowledge, as necessary, by August 29, 2019. By not returning the security and pet damage deposits, and not applying for dispute resolution on a claim against the deposits, I find the landlord's actions constitute a breach of section 38 of the *Act*. The landlord must pay the tenant double the amount of the security deposit and pet damage deposit, as per section 38(6) of the *Act*.

The *Act* section 72 grants me the authority to order the repayment of a fee for the Application. As the tenant was successful in their claim, I find they are entitled to recover the filing fee from the landlord.

Conclusion

I order the landlord to pay the tenant the amount of \$1,475.00 which includes: \$1,375.00 for double the amount of the security deposit and the \$100.00 filing fee. I grant the tenant a monetary order for this amount. This order must be served on the landlord. Should the landlord fail to comply with this monetary order it may be filed in the Provincial Court (Small Claims) 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 15, 2020

Residential Tenancy Branch