



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing originally convened as a Direct Request but was adjourned to a participatory hearing in an Interim Decision dated May 25, 2020. This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlords did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the landlords to call into this teleconference hearing scheduled for 9:30 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant testified that he served each landlord with his application for direct request via registered mail on May 17, 2020. The customer receipts and tracking numbers were entered into evidence. I find that the landlords were deemed served with the tenant's application for dispute resolution on May 22, 2020, in accordance with sections 89 and 90 of the *Act*.

The tenant testified that he served each landlord with a copy of the Interim Decision and Notice of Reconvened Hearing via registered mail on May 31, 2020. The tenant provided the tracking numbers verbally in the hearing. The tracking numbers are located on the cover page of this decision. I find that the landlords were deemed served with the

Interim Decision and Notice of Reconvened Hearing on June 5, 2020, in accordance with sections 89 and 90 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

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

The tenant provided the following undisputed testimony. The tenant entered into a verbal tenancy agreement with the landlords to move into the subject rental property on April 1, 2020. The tenant paid a deposit of \$900.00 to the landlords. The tenant entered into evidence a screen shot of his online banking which shows a transfer of \$900.00 to landlord R.P. The tenant informed the landlords on March 8, 2020 that he would not move into the subject rental property.

The tenant testified that he sent landlord R.P. a copy of his forwarding address in writing via registered mail on March 13, 2020. The tenant provided the tracking number verbally in the hearing. The tracking number is located on the cover page of this decision.

The tenant testified that the landlords refused to return his deposit. The tenant testified that he did not authorize the landlords to retain any portion of his deposit.

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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 to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I find that the landlord R.P. was deemed served with the tenant's forwarding address on March 18, 2020, in accordance with section 88 and 90 of the Act. Based on the undisputed testimony of the tenant, I find that the landlords did not return any of his deposit and that the tenant did not authorize the landlords to retain any portion of his deposit.

I find that this tenancy agreement ended on March 8, 2020 when the tenant provided the landlord with notice that he would not move into the subject rental property. The landlords did not file an application for dispute resolution seeking authorization to retain the tenant's security deposit within 15 days of receiving the tenant's forwarding address in writing. Therefore, pursuant to section 38 of the Act, I find that the tenant is entitled to double his security deposit, in the amount of \$1,800.00.

As the tenant was successful in his application for dispute resolution, I find that he is entitled to recover the \$100.00 filing fee in accordance with section 72 of the Act.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$1,900.00.

The tenant is provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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 22, 2020

Residential Tenancy Branch