



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-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 an order for the return of their security and pet damage deposits that the Landlord is holding without cause; and to recover the \$100.00 cost of their Application filing fee.

The Tenant, S.J., 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, S.J.

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 email, sent on June 2, 2020, as the Landlord had not provided an address for service in the tenancy agreement. The Tenant said that email and text were the Parties' main way of communicating. The Tenant submitted evidence in the form of texts, which indicated that the Landlord had received the Tenants' emails at the address provided by the Tenant for the Landlord. Based on the evidence before me on this matter, 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 provided the Parties' email addresses in the Application and confirmed them in at the outset of 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.

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 advised that the periodic tenancy began on October 1, 2017, with a monthly rent of \$1,900.00, due on the first day of each month. The Tenant advised that the Tenants paid the Landlord a security deposit of \$950.00, and a pet damage deposit of \$950.00. The Tenant said that the Parties did a "walk-through" at the start and the end of the tenancy; however, the Landlord did not produce or supply the Tenants with a copy of a condition inspection report.

The Tenant said that they moved out of the rental unit on May 1, 2020, and that he provided the Landlord with the Tenants' forwarding addresses on April 14, 2020 by email. The Tenant said that the Landlord acknowledged receipt of this email and the Tenant submitted a copy of text messages between the Parties demonstrating that the Landlord received the Tenants' respective forwarding addresses.

The Tenant said that the Landlord has not returned the Tenants' security or pet damage deposits, despite having their forwarding addresses and despite his not having had any complaints about the condition of the rental unit. There is no evidence before me that the Landlord applied to keep the deposits by filing for RTB dispute resolution.

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 addresses to the Landlord on April 14, 2020, and that the tenancy ended on May 1, 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 \$950.00 security deposit and the \$950.00 pet damage deposit within fifteen days of May 1, 2020, namely by May 15, 2020, or to apply for dispute resolution to claim against the security deposit, pursuant to section 38(1). There is no evidence before me that the Landlord returned any amount of the deposits or applied to the RTB for dispute resolution, claiming against the deposits. 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) of the Act that the landlord must pay the tenant double the amount of the security and/or pet damage deposit. There is no interest payable on the deposits.

I, therefore, award the Tenants **\$3,800.00** from the Landlord in recovery of double the security and pet damage deposits pursuant to sections 38 and 67 of the Act. Given that the Tenants were successful in their Application, I also award them recovery of the **\$100.00** Application filing fee, pursuant to section 72 for a total award of **\$3,900.00**.

Conclusion

The Tenants' claim against the Landlord for return of the security and pet damage deposits is successful in the amount of \$3,800.00. The Landlord did not return the Tenants' security or pet damage deposits or apply for dispute resolution within 15 days of the later of the end of the tenancy and the Landlord receiving the Tenants' forwarding addresses. Further, pursuant to section 36(6)(b) of the Act, I award the Tenants with double the amount of the \$1,900.00 security and pet damage deposits, plus recovery of the \$100.00 Application filing fee, pursuant to section 72.

I grant the Tenants a Monetary Order under section 67 of the Act from the Landlord in the amount of **\$3,900.00**.

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: July 13, 2020

Residential Tenancy Branch