



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- an order for the landlord to return the security deposit, pursuant to sections 38 and 38(1) of the Act;
- an authorization to recover the filing fee for this application, pursuant to section 72 of the Act.

I left the teleconference connection open until 1:45 P.M. to enable the landlord (respondent) to call into this teleconference hearing scheduled for 1:30 P.M. The tenant (applicant) attended 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 affirmed she served the landlord the Notice of Hearing and the evidence (the materials) by registered mail sent on March 18, 2020. The tracking number is on the cover page of this decision.

I find the landlord was properly served in accordance with section 89(1)(c) of the Act. The landlord is deemed to have received the materials on March 23, 2020, in accordance with section 90 (a) of the Act.

Issues to be Decided

Are the tenants entitled to:

1. an order for the landlord to return double the security deposit?
2. an authorization to recover the filling fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained to the tenant it is her obligation to present the evidence, pursuant to Rule of Procedure 7.4.

The tenant affirmed the tenancy started on October 01, 2019 and ended on January 01, 2020. Monthly rent was 1,800.00 due on the last day of the previous month. At the outset of the tenancy a security deposit of \$900.00 was collected and the landlord still holds it in trust. The written tenancy agreement was submitted as evidence.

The tenant affirmed she did not authorize the landlord to retain the security deposit and the forwarding address was provided on December 31, 2019 by registered mail (the tracking number is on the cover page of this decision).

Canada Post customer receipts for the registered mail packages were provided.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

I find the landlord has not brought an application for dispute resolution claiming against the security deposit pursuant to section 38(1)(d) of the *Act*.

I accept the tenant's undisputed testimony and documentary evidence that the tenant gave the landlord written notice of her forwarding address on December 31, 2019 and that the landlord did not return the security deposit.

The landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

Residential Tenancy Branch Policy Guideline 17 states:

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;

Under these circumstances and in accordance with sections 38(6) and 72 of the Act and Policy Guideline 17, I find that the tenants are entitled to a monetary award of \$1,800.00. Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit.

As the tenants' application is successful, I award the tenants the return of the filing fee.

In summary:

ITEM	AMOUNT \$
Section 38(6) - doubling of \$900.00 security deposit	1,800.00
Section 72 - Reimbursement of filing fee	100.00
TOTAL	1,900.00

Conclusion

Pursuant to sections 38 and 72 of the Act, I grant the tenants a monetary order in the amount of \$1,900.00.

This order must be served on the landlord by the tenants. 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: July 15, 2020

Residential Tenancy Branch