



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of double the amount of the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord, "tenant LFZ" and "tenant YK" did not attend this hearing, which lasted approximately 12 minutes. Tenant KK ("tenant") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant confirmed that he had permission to represent tenant LFZ and tenant YK at this hearing (collectively "tenants").

The tenant testified that he served the landlord with the tenants' application for dispute resolution hearing package on March 20, 2020, by way of registered mail to the service address provided by the landlord in the tenancy agreement. The tenant provided a Canada Post receipt and confirmed the tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenants' application on March 25, 2020, five days after its registered mailing.

Issues to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

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

The tenant testified regarding the following facts. This tenancy began on September 1, 2018 and ended on December 31, 2019. Monthly rent, inclusive of utilities, in the amount of \$2,911.90 was payable on the first day of each month. A security deposit of \$1,350.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. A move-in condition inspection report was completed for this tenancy, but a move-out condition inspection report was not completed. The tenants provided a written forwarding address by way of sending a letter to the landlord on November 26, 2019, by way of registered mail. The tenants provided a copy of this letter and the Canada Post receipt for the mailing. The tenant confirmed the Canada Post tracking number verbally during the hearing. The tenants did not receive an application for dispute resolution from the landlord to retain the tenants' security deposit. The tenants did not give the landlord written permission to retain any amount from the tenants' security deposit.

The tenants seek a return of double the amount of their security deposit of \$1,350.00, totalling \$2,700.00, plus the \$100.00 application filing fee.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenants' 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 tenants' 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 deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the 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)).

On a balance of probabilities, I make the following findings based on the testimony and written evidence of the tenants. The tenancy ended on December 31, 2019. The tenants provided a written forwarding address to the landlord by way of a letter sent by registered mail to the landlord on November 26, 2019. I find that the landlord was deemed served with this letter on December 1, 2019, five days after its registered mailing, as per sections 88 and 90 of the *Act*.

I find that the tenants did not give the landlord written permission to retain any amount from their security deposit. The landlord did not return the full deposit or make an application for dispute resolution to claim against the deposit within 15 days of the later end of tenancy date on December 31, 2019.

In accordance with section 38(6)(b) of the Act and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive double the value of their security deposit of \$1,350.00, totaling \$2,700.00. There is no interest payable on the deposit during the period of this tenancy.

As the tenants were successful in this application, I find that they are to recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$2,800.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord 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: July 21, 2020

Residential Tenancy Branch