



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* (the "Act") for:

- A return of the security deposit pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenants both attended and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenants testified that they served the landlord with their notice of application and evidence by email sent on June 22, 2020 to an email address routinely used by the landlord to correspond regarding tenancy matters from the tenant's email address routinely used for such matters. Email was an acceptable method of service pursuant to section 71(2) of the Act and the order of the Director dated March 30, 2020 as at June 22, 2020 when the tenants served the landlord with their hearing package. Accordingly, I find that the landlord is deemed served with the tenants' materials on June 25, 2020, three days after emailing.

Issue(s) to be Decided

Are the tenants entitled to a monetary award?

Are the tenants entitled to recover the filing fee from the landlord?

Background and Evidence

The tenants provided undisputed evidence regarding the following facts. This periodic tenancy began on September 1, 2019 with monthly rent in the amount of \$1,850.00 payable on the first of each month. A security deposit of \$1,000.00 was collected and is still held by the landlord.

No written tenancy agreement was provided to the tenants, no condition inspection report was prepared at any time for this tenancy.

The tenancy ended May 1, 2020. The tenants provided the landlord with their forwarding address in writing by email dated May 25, 2020 sent to the landlord's email address routinely used for correspondence on tenancy issues from the tenants' email used for such matters. The tenants did not provide authorization that the landlord may retain any portion of the deposit for this tenancy.

Analysis

While the landlord has violated section 13 of the Act which provides that a landlord must prepare in writing every tenancy agreement entered into, I accept the undisputed evidence of the tenants that there was a valid tenancy agreement between the parties. I accept that monthly rent was \$1,850.00 and that the tenants paid a deposit of \$1,000.00 which they have not authorized the landlord to retain.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a 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) of the *Act* equivalent to the value of the security deposit.

Based on the tenants' testimony and copies of the correspondence submitted into evidence I accept that the tenants provided the landlord with their forwarding address in an email of May 25, 2020. Pursuant to section 71(2) of the Act and the order of the Director dated March 30, 2020 email was a permitted method of providing a forwarding address and I find the landlord is deemed to have received the forwarding address on May 28, 2020, three days after emailing.

In the present case the landlord had 15 days from May 28, 2020, the date they are deemed to have received the tenants' forwarding address, to either return the deposit or file an application. The landlord did neither.

Furthermore, the tenant testified that no condition inspection report was prepared at any time for this tenancy. Pursuant to section 24 of the *Act*, a landlord who fails to prepare a condition inspection report in accordance with section 23 extinguishes their right to claim against the security deposit.

Section 19(a) of the *Act* prohibits a landlord from requiring or accepting more than half a month's rent as a deposit and the payment of a greater amount is to be treated as an overpayment. I find that the deposit paid by the tenant of \$1,000.00 exceeds half a month's rent of \$1,850.00. Therefore, I find that the payment of \$1,000.00 to be comprised of a security deposit of \$925.00 and an overpayment of \$75.00. I find that the tenants are entitled to a return of this overpayment and issue a monetary award in the amount of \$75.00 accordingly.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenants' security deposit in full within the required 15 days from May 28, 2020. I accept the tenants' evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$1,850.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

As the tenants were successful in their application they are entitled to recover the filing fee from the landlord.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$2,025.00, comprised of double the amount of the security deposit, their overpayment and recovery of the filing fee. 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: October 13, 2020

Residential Tenancy Branch