



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSDB-DR, FFT**

Introduction

This participatory hearing was convened after the issuance of an August 27, 2020 Interim Decision of an Adjudicator. The Adjudicator determined that the tenants' application could not be considered by way of the direct request proceedings, as had been originally requested by the tenants. The Adjudicator reconvened the tenants' application for the following to a participatory hearing:

- A return of the security deposit pursuant to section 38 of the *Act*; and
- A return of the filing fee pursuant to section 72 of the *Act*.

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter.

Both tenants and the landlord attended the hearing. All parties present were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. All parties confirmed receipt of each other's evidentiary package and the landlord confirmed receipt of the tenants' evidentiary package. I find all parties were duly served in accordance with the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a return of their security deposit?

Can the tenants recover the filing fee?

Background and Evidence

All parties present confirmed this tenancy began on August 1, 2019 and ended on August 1, 2020. Rent was \$2,300.00 per month and a security deposit of \$1,150.00, along with a pet deposit of \$500.00 were collected at the outset of the tenancy.

On August 9th and 10th, 2020 the landlord returned \$1,250.00 worth of deposits to the tenants in two separate e-transfers. One deposit of \$875.00 was sent to tenant S.K. on August 10, 2020, while a second deposit of \$375.00 was sent to tenant A.M. on the date prior, August 9, 2020. The landlord acknowledged withholding \$400.00 from the tenants' deposits.

The tenants explained that their forwarding was sent to the landlord via email on August 2, 2020. The landlord disputed having received this forwarding address, with the tenants questioning the landlord's sincerity in this statement. The tenants said that the landlord sent them correspondence from the same email address on August 10, 2020. A significant amount of testimony was presented by both sides regarding the outstanding \$400.00 and its relation to landscaping work on the property. An undated text message marked as Exhibit #5 in the landlord's evidence notes a conversation between the landlord and tenant A.M. in which tenant A.M. writes, "Hey I agree to cover the \$200 in landscape cleanup work from my damage deposit :)".

Analysis

Section 38 of the *Act* requires a landlord to either return a tenant's security or pet 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 and upon receipt of the tenant's 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 or pet 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 as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

I find some evidence that tenant A.M. agreed via text message to allow the landlord to withhold \$200.00 of their security or pet deposits. I find no agreement or offer was made by either tenant regarding the remaining \$200.00 of their deposits. I find the tenants provided their forwarding address to the landlord in writing via email on August 2, 2020 and I place little weight on the landlord's testimony that he did not receive their forwarding address. I make this finding because credible evidence was presented by the tenants that they received repeated correspondence from the landlord originating at the email address to which they sent their forwarding address.

The fact that expenses may have been incurred related to the landscaping is irrelevant if the landlord has not taken steps to apply to withhold either deposit. As tenant A.M. agreed in text message to allow the landlord to withhold \$200.00 worth of the deposits, I make an order for the landlord to return the outstanding \$200.00. For the reasons outlined above, I order this amount doubled pursuant to section 38 of the *Act*.

As the tenants were successful in their application, they may recover the \$100.00 filing fee pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order in the tenants' favour as follows:

ITEM	AMOUNT
Return of remaining Security Deposit x2 @\$200.00	\$400.00
Return of Filing Fee	100.00
TOTAL =	\$500.00

The tenants are awarded a monetary order of \$500.00 against the landlord. 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 19, 2020

Residential Tenancy Branch