



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR, FFT

Introduction

On September 11, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for the return of the security deposit and pet damage deposit, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Tenant attended the conference call hearing; however, the Landlord did not attend at any time during the 20-minute hearing. The Tenant testified that they served the Landlord with the Notice of Dispute Resolution Proceeding by sending it via registered mail on September 19, 2020. The Tenant provided the tracking number and stated that, according to the Canada Post website, the package was delivered on September 22, 2020. I find that the Landlord has been duly served with the Notice of Dispute Resolution Proceeding in accordance with Section 89 the Act.

Rule 7.3 of the *Residential Tenancy Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Landlord did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the affirmed testimony and evidence as presented by the Tenant.

Issues to be Decided

Should the Tenant receive a Monetary Order for the return of the security deposit, in accordance with Section 38 and 67 of the Act?

Should the Tenant be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Tenant provided the following undisputed testimony and evidence:

The one-year, fixed-term tenancy began on June 1, 2019 and ended on May 31, 2020. The monthly rent was \$1,750.00 and the Landlord collected and still holds a security deposit of \$875.00 and a pet damage deposit of \$400.00.

The Tenant submitted an email, dated May 30, 2020, that advised the Landlord of the Tenant's forwarding address and confirmed that she could receive her security deposit via e-transfer to the email address. The forwarding address that the Tenant provided to the Landlord was the same address as the rental unit. The Tenant advised the Landlord that when mail is addressed to the Tenant at the rental unit, Canada Post will forward the mail to her new address. The Tenant stated that she made this arrangement as she did not want the Landlord to know where she moved. The Tenant also stated that she dropped a letter to the Landlord's mailbox with the same information about her forwarding address on May 30, 2020.

When questioned, the Tenant confirmed that she has received correspondence from the Landlord at her new address, via the rental unit address, when she received the documents about a previous Dispute Resolution hearing in October 2020.

The Tenant stated that she had asked the Landlord about conducting a move-out inspection; however, no inspection was ever completed.

The Tenant is requesting double the amount of the security deposit and pet damage deposit returned.

Analysis

Section 38 of the Act states that the landlord has fifteen days, from the later of the day the tenancy ends or the date the landlord received the tenant's forwarding address in writing to return the security deposit to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an Application for Dispute Resolution claiming against the deposit. If the landlord does not return or file for Dispute Resolution to retain the deposit within fifteen days and does not have the tenant's

agreement to keep the deposit, or other authority under the Act, the landlord must pay the tenant double the amount of the deposit.

I accept the Tenant's undisputed testimony and evidence that they requested their \$875.00.00 security deposit, their \$400.00 pet damage deposit, and notified the Landlord of their forwarding address on May 30, 2020 in accordance with Sections 88 of the Act and pursuant to the Director's Order.

I have no evidence before me that the Landlord returned the balance of the security deposit or reached written agreement with the Tenant to keep some of the security deposit. However, I note that the Landlord did make an Application for Dispute Resolution, claiming against the deposit, on June 15, 2020. A subsequent hearing was held for the Tenant and the Landlord on October 6, 2020.

Upon review of the Decision, dated October 6, 2020, the arbitrator indicated that the Landlord did not attend the hearing. During the hearing, it is noted that the Tenant "provided affirmed testimony that the landlord served her with the notice of hearing package via email...". As a result, I find that the Tenant has not received correspondence from the Landlord via the forwarding address provided, as stated by the Tenant.

When I consider whether I should double the amount of the deposits for the Tenant, I note the fact that the Landlord did apply for Dispute Resolution, pursuant to section 38 of the Act. Furthermore, I find the circumstances of the Tenant providing the address of the rental unit as the forwarding address could have caused confusion for the Landlord. Therefore, I do not find that the Tenant is owed double the deposits.

However, I do find that the Landlord is still holding the security deposit and pet damage deposit and must reimburse the Tenant the outstanding amount for a total of \$1,275.00, pursuant to Section 38 of the Act.

I find that the Tenant's Application has merit and that the Tenant is entitled to recover the cost of the filing fee for this Application for Dispute Resolution, in the amount of \$100.00.

I order the Landlord to return the security deposit, the pet damage deposit, and the cost of the filing fee, for a total amount of \$1,375.00, to the Tenant by sending a payment via e-transfer to the Tenant's email address, as the Tenant originally requested. The return of the deposits must be completed within 15 days of the Landlord receiving this Decision. If the Landlord fails to return the deposits within 15 days, they may be at risk of owing double the amount of the deposits to the Tenant.

Conclusion

Pursuant to section 38 of the Act, I order the Landlord to return the security deposit and pet damage deposit, and to compensate the Tenant for the filing fee, in the total amount of \$1,375.00. This return of the deposits and compensation for the filing fee is to be made to the Tenant by sending a payment via e-transfer to the Tenant's email address.

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: November 10, 2020

Residential Tenancy Branch