



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 for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by both tenants.

The tenants testified the landlords were served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on July 10, 2020 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed. The tenants provided a copy of the registered mail receipt.

The tenants submitted that they served their hearing package and evidence to the mailing address provided by the landlord on their Application for Dispute Resolution that was heard on July 23, 2020 (file number noted on the coversheet of this decision). They also submitted that they also served a copy of their application to the former property manager and he has verbally confirmed to the tenants, prior to the hearing, receipt of the package.

I note that the landlords filed an Application for Dispute Resolution (as noted above) seeking compensation and retention of the security and pet damage deposits from the tenants resulting from the tenancy on March 17, 2020 and the matter was heard on July 23, 2020. In the decision dated July 27, 2020, the Arbitrator dismissed the landlord's claim in its entirety without leave to reapply. However, the Arbitrator did not deal with the dispersal of the security and pet damage deposits but did reference this hearing.

Based on the testimony and evidence of the tenants and on the fact that this Application was discussed in the previous hearing between these two parties, I find that the landlords have been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenants entitled to a monetary order for return of double the amount of the security and pet damage deposits and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the Act.

Background and Evidence

The tenants submitted into evidence a copy a tenancy agreement signed by the parties on April 8, 2017 for a 5 year fixed term tenancy beginning on May 1, 2017 for a monthly rent of \$4,695.00 due on the first of each month with a security deposit of \$2,347.50 and a pet damage deposit of \$2,347.50 paid. The tenancy ended on September 30, 2018.

The tenants submitted that they provided their forwarding address to the landlords in their email to the landlords advising them that they would be ending their tenancy. The email was sent to the landlords on September 18, 2018.

The tenants provided a copy of the landlords' response dated September 23, 2018 stating that she does not "recognize your notice and will not be requesting my property manager to contact you for a 'end of tenancy conditional inspection'".

The tenants submitted a copy of the July 27, 2020 decision dismissing the landlords' Application for Dispute Resolution. In that decision I note the Arbitrator wrote:

"At the beginning of the tenancy, the tenants provided a security deposit in the amount of \$2,347.50 and a pet damage deposit in the amount of \$2,347.50 for a total of \$4,695.00 ("the security deposit") which is held by the landlord without the consent of the tenants. The parties agreed the tenants provided their forwarding address before they vacated the unit. The landlord declined in writing to attend a condition inspection requested by the tenants, a copy of the correspondence being admitted as evidence."

Analysis

Section 38(1) of the Act stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

From the undisputed testimony and evidence of the tenants I find the tenancy ended on September 30, 2018 and that they had provided their forwarding address to the landlord

before they moved out of the rental unit. As such, I find the landlords had received the tenants' forwarding by September 30, 2018.

Therefore, I find the landlords had until October 15, 2018 to either return both deposits to the tenants or file their Application for Dispute Resolution seeking to claim against both deposits to be compliant with the requirements set out in Section 38(1). As noted above the landlords filed their Application for Dispute Resolution on March 17, 2020 – approximately a year and a half after the end of the tenancy. As a result, I find the landlords failed to comply with Section 38(1) of the *Act*.

As the landlords have failed to comply with Section 38(1), I find the tenants are entitled to the return of double the amount of both deposits, pursuant to Section 38(6) of the *Act*.

Conclusion

I find the tenants entitled to monetary compensation pursuant to Section 38 and 67 and issue a monetary order in the amount of **\$9,490.00** comprised of \$4,795.00 double the security deposit, \$4795.00 double the pet damage deposit and the \$100.00 fee paid by the tenants for this application.

This order must be served on the tenants. If the tenants fail to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and 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: November 02, 2020

Residential Tenancy Branch