



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing originated as a Direct Request and a participatory hearing was ordered in an Interim Decision dated September 17, 2020. This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlords did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the landlords to call into this teleconference hearing scheduled for 9:30 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant testified that the landlords were each served with the Interim Decision and Notice of Reconvened Hearing, as ordered in the Interim Decision, via registered mail. The tenant entered into evidence a Canada Post receipt confirming the above testimony. The Canada Post tracking website states that the above packages were delivered on September 21, 2020. I find that the packages were served on the landlords in accordance with section 89 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

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

The tenant provided the following undisputed testimony. This tenancy began on July 1, 2019 and ended on July 31, 2020. Monthly rent in the amount of \$1,550.00 was payable on the first day of each month. A security deposit of \$775.00 was paid by the tenant to the landlords. A written tenancy agreement was signed by both parties and pages 1-3 and 6 out of 6 were entered into evidence.

The tenant testified that he did not share a kitchen or a bathroom with the landlords. The tenant testified that the subject rental property was a self-contained suite above the landlords' garage.

The tenant testified that he left his forwarding address in the landlords' mailbox on August 10, 2020. The tenant entered into evidence a time and date stamped photograph of same. The time/date stamp reads August 10, 2020, 5:58 p.m.

The tenant testified that the landlords have not returned any portion of his security deposit and that he has not authorized them to retain any portion of his deposit.

The landlords did not file an application for dispute resolution claiming against the tenant's security deposit.

Analysis

I accept the tenant's testimony that the subject rental property was a self-contained suite and that the tenant did not share a kitchen or a bathroom with the landlords.

Section 38 of the Act requires the landlords to either return the tenant's 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 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)(b) of the Act, equivalent to double the value of the security deposit.

However, this provision does not apply if the landlords have 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 (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

Based on the testimony of the tenant and the documents entered into evidence, I find that the landlords were deemed served with the tenant's forwarding address on August 13, 2020, three days after it was left in the landlords' mailbox, pursuant to sections 88 and 90 of the *Act*. I accept the tenant's undisputed testimony that the tenant did not authorize the landlords to retain any portion of his deposit.

Based on the tenant's undisputed testimony, I find that the landlords did not return the tenant's security deposit within 15 days of receiving the tenant's forwarding address in writing, contrary to section 38 of the *Act*. Therefore, the tenant is entitled to receive double the security deposit in the amount of \$1,550.00, pursuant to section 38 of the *Act*.

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlords, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$1,650.00.

The tenant is provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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: November 05, 2020

Residential Tenancy Branch