



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

On September 3, 2020, the Tenants applied for a Direct Request proceeding seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

On September 17, 2020, this Application was set down for a Dispute Resolution participatory hearing to be heard on November 5, 2020 at 9:30 AM.

Both Tenants attended the hearing. J.A. attended the hearing and advised that she is not the Landlord, but she was an agent acting on behalf of the Landlord/Owner of the rental unit. She provided the Landlord/Owner’s legal name and as per the Tenants’ request, the Style of Cause on the first page of this Decision was changed to reflect this. All in attendance provided a solemn affirmation.

Tenant C.V. advised that the Notice of Hearing and evidence package was served to the Landlord on September 21, 2020 and J.A. confirmed that this package was received. Based on this undisputed testimony, I am satisfied that the Landlord was served the Notice of Hearing and evidence package. As a result, I have accepted the Tenants’ evidence and will consider it when rendering this Decision.

J.A. advised that the Landlord did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a return of double the security deposit?
- Are the Tenants entitled to a Monetary Order for compensation?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on January 1, 2018 and ended when the Tenants gave up vacant possession of the rental unit on October 31, 2019. Rent was established at an amount of \$1,200.00 per month and was due on the first day of each month. A security deposit of \$600.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

C.V. advised that they had been texting J.A. since November 2019 and they had provided their forwarding address to her by text message then. She then stated that they sent the Landlord a demand letter on March 1, 2020 by regular mail to the only address they had for the Landlord. She advised that this address was provided by J.A. and they were told by her during the tenancy to direct all of their correspondence to this address. They were never provided with a different address for service of documents by the Landlord. They then sent a registered letter with their forwarding address to this same address on May 19, 2020. They submitted a copy of the registered mail receipt as documentary evidence to support this.

To date, the Tenants have not received their deposit back, nor has the Landlord made an Application to claim against this deposit. As the Landlord did not comply with Section 38 of the *Act* with respect to dealing with this deposit accordingly, they are seeking double the security deposit in the amount of **\$1,200.00**.

She stated that they were also seeking compensation in the amount of **\$200.00** that they were awarded in a previous Dispute Resolution hearing. However, they were advised that as they were already awarded a Monetary Order for this amount, they could not be awarded it again. As such, this claim is dismissed without leave to reapply.

J.A. advised that the Landlord acknowledged that the Tenants are owed their deposit back. She initially stated that she never received any text messages from the Tenants until July 27, 2020. However, she then contradictorily testified that she received the Tenants' forwarding address by text from Tenant M.T. on March 15, 2020. Inconsistent with her solemnly affirmed testimony was a screenshot of the Tenants' text messages with her on November 1, 2019 which demonstrated that they provided this forwarding address then. She then confirmed that she received this text and that she agreed in these texts with the Tenants that the deposit could be electronically transferred. She advised the Landlord of this then, and she is not sure why he did not return the deposit.

She stated that she did not receive any letter from the Tenants in March 2020. She claimed that this address was the Landlord's former office and that it was vacated in March 2020. She confirmed that she received the Tenants' May 19, 2020 registered mail letter, but only received it later that summer because it was forwarded by the new occupants of that business office. She stated that she informed the Landlord when this package was received and that he stated he would send the deposit back; however, she is not sure why he did not do so.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

When reviewing the evidence before me, the Tenants provided evidence that they provided a forwarding address to J.A. on November 1, 2019, and J.A. not only acknowledged receiving this address but made an alternate suggestion of electronically transferring the funds instead of delivering the deposit to this address. Furthermore, J.A. testified that she advised the Landlord of this, but she is unsure why the Landlord elected not to act on this.

While the provision of this forwarding address by text was not in writing, there is no dispute that the agent for the Landlord received this address then. As such, I am satisfied that the Landlord had received this address, as J.A. acknowledged to receiving it then and because she took steps to make the Landlord aware of this. Consequently, I am satisfied that the Landlord received the Tenants' forwarding address on November 1, 2019.

I find it important to note that Section 38 of the *Act* clearly outlines that from the later point of a forwarding address being provided or from when the tenancy ends, the Landlord must either return the deposit in full **or** make an Application to claim against the deposit. There is no provision in the *Act* which allows the Landlord to retain the deposit without the Tenants' written consent.

As the Landlord had received the Tenants' forwarding address, he had 15 days from November 1, 2019 to either return the deposit in full or make an Application through the Residential Tenancy Branch to keep the deposit. However, the Landlord took no action.

Based on the totality of the evidence before me, as the Tenants did not provide written authorization for the Landlord to keep any amount of the deposit, and as the Landlord did not return the deposit in full or make an Application to keep the deposit within 15 days of November 1, 2019, I find that the Landlord did not comply with the requirements of Section 38 and illegally withheld the deposit contrary to the *Act*. Therefore, the doubling provisions of this Section do apply in this instance.

Consequently, I am satisfied that the Tenants have substantiated a monetary award amounting to double the original security deposit. Under these provisions, I grant the Tenants a monetary award in the amount of \$1,200.00.

As the Tenants were successful in their claims, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 38 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Doubling of the security deposit	\$1,200.00
Recovery of filing fee	\$100.00
TOTAL MONETARY AWARD	\$1,300.00

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$1,300.00** in the above terms, and 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: November 5, 2020

Residential Tenancy Branch