



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A participatory hearing was held, via teleconference, on December 14, 2020. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- An order that the Landlord return all or part of the security deposit or pet damage deposit.

One of the Landlords and both Tenants attended the hearing. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord confirmed receipt of the Tenants' application and Notice of Hearing. The Tenants stated they sent two more registered mail packages with evidence, but were unable to provide the tracking information for those packages, or the dates they were sent. The Landlord denied getting the evidence packages, or any of the photos. Given the lack of information regarding service of the Tenant's evidence packages, I find these packages are not admissible as the Tenants have failed to show they sufficiently served the Landlord with those packages. That being said, much of the evidence pertains to photos of the unit, which are not relevant for the matters applied for.

The Tenants confirmed receipt of the Landlords' evidence package.

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

Issue(s) to be Decided

1. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

Background and Evidence

The parties confirmed the tenancy started on June 1, 2020, and ended on July 31, 2020. Both parties also agreed that the Tenants paid a security deposit of \$900.00.

The Landlord stated that she received the Tenants' forwarding address in writing on August 10, 2020, via registered mail. The Landlord stated that they sent an e-transfer to the Tenants on August 2, 2020, for \$600.00. The Landlord stated that they retained \$300.00 from the Tenant's security deposit, to pay for some of the cleaning costs they felt were warranted. The Landlords did not file an application against the deposit.

The Tenants confirmed that they never opened or cashed the e-transfer because it was not the full amount. The Tenants are now seeking double the security deposit, pursuant to section 38 of the Act, because the Landlord did not return their deposit, or file an application against the deposit within 15 days of receiving their forwarding address.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, both parties confirmed that the Tenants moved out of the rental unit on July 31, 2020, which I find reflects the end of the tenancy. The Landlord confirmed that she got the Tenants' forwarding address on August 10, 2020. There does not appear to be any consensus with respect to how to manage the security deposit at the end of the tenancy, or whether any deductions were warranted.

As such, I find the Landlord had until August 25, 2020, to either repay the security deposit (in full) to the Tenants or make a claim against it by filing an application for dispute resolution. In this case, the Landlord did not make any application against the deposit, and only returned \$600.00 of the \$900.00 held. I further note this e-transfer was never cashed, and so the Landlord still holds the full deposit of \$900.00.

I find no evidence that the Landlord had any legal basis to retain any money from the security deposit she held, and in doing so without filing an application to claim against the deposit for the cleaning fees, I find section 38(1) of the Act was breached.

Accordingly, as per section 38(6)(b) of the Act, I find the Tenants are entitled to recover double the amount of the security deposit (\$900.00 x 2), previously held by the Landlord. Further, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenants paid to make the application for dispute resolution.

In summary, I make the monetary order as follows:

Item	Amount
Return of Double security deposit (\$900.00 x 2)	\$1,800.00
Filing Fee	\$100.00
Total Monetary Order	\$1,900.00

Accordingly, pursuant to section 67 of the Act, I grant the above monetary order based on the Landlord's failure to deal with the security deposit in accordance with section 38 of the Act.

Conclusion

I grant the Tenants a monetary order in the amount of **\$1,900.00**. This order must be served on the Landlord. If the Landlord fails 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: December 14, 2020

Residential Tenancy Branch