



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of double the amount of the tenants' security and pet damage deposits (collectively "deposits"), pursuant to section 38.

The "female tenant" did not attend this hearing, which lasted approximately 27 minutes. The landlord and the male tenant ("tenant") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant confirmed that he had permission to represent the female tenant at this hearing (collectively "tenants").

The tenants' application was originally scheduled as a direct request proceeding, which is a non-participatory hearing. The direct request proceeding is based on the tenants' paper application only, not any submissions from the landlord. An "interim decision," dated September 9, 2020, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

The tenants were required to serve the landlord with a copy of the interim decision, the notice of reconvened hearing and all other required documents. The landlord confirmed receipt of the above documents from the tenants. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the above required documents.

The landlord confirmed of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application.

Issue to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on November 1, 2018 and ended on June 30, 2020. Monthly rent in the amount of \$2,200.00 was payable on the first day of each month. A security deposit of \$1,100.00 and a pet damage deposit of \$400.00 and the landlord continues to retain both deposits. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were not completed for this tenancy. The tenants provided a written forwarding address by way of a letter, dated July 3, 2020, which the landlord received on July 23, 2020. The landlord did not file an application for dispute resolution to retain the tenants' deposits. The landlord did not have written permission to keep any amount from the tenants' deposits.

The tenants seek a return of their deposits totalling \$1,500.00. The landlord disputes the tenants' application, claiming that the tenants owe money for damages.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenants' deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenants' 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 deposits. However, this provision does not apply if the landlord has obtained the tenants' written

authorization to retain all or a portion of the 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 tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

On a balance of probabilities, I make the following findings based on the testimony and evidence of both parties.

The tenancy ended on June 30, 2020. The tenants provided a written forwarding address, which was received by the landlord on July 23, 2020. The tenants did not give the landlord written permission to retain any amount from their deposits. The landlord did not return the deposits or make an application for dispute resolution to claim against the deposits within 15 days of the end of tenancy date and the forwarding address date.

Although the tenants did not apply for double the value of their deposits, I find that I am required to consider the doubling provision as per Residential Tenancy Policy Guideline 17. In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive double the value of their deposits of \$1,500.00, totalling \$3,000.00. There is no interest payable on the deposits during the period of this tenancy.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$3,000.00 against the landlord. 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: December 14, 2020

Residential Tenancy Branch