



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR, FFT

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 38.1 of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the tenants for a Monetary Order for the return of double the security deposit and the pet damage deposit (the deposits).

The tenants submitted two signed Proof of Service Tenant's Notice of Direct Request Proceeding forms which declare that on December 2, 2020, the tenants sent each of the landlords the Notice of Direct Request Proceeding by registered mail. The tenants provided a copy of the Canada Post receipt containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the tenants and in accordance with sections 89 and 90 of the *Act*, I find that the landlords are deemed to have been served with the Direct Request Proceeding documents on December 7, 2020, the fifth day after their registered mailing.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation for the return of a security deposit and a pet damage deposit pursuant to sections 38 and 67 of the *Act*?

Are the tenants entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The tenants submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by Landlord A.T. on January 11, 2016, indicating a monthly rent of \$1,300.00, a security deposit of \$650.00, and a pet damage deposit of \$200.00, for a tenancy commencing on February 1, 2016;

- A copy of a receipt dated September 13, 2019, for \$200.00 of pet damage deposit, paid by the tenants;
- A copy of a letter from the tenants to the landlords dated October 31, 2020, providing the forwarding address for the return of the deposits;
- A copy of a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit (the forwarding address) dated October 31, 2020
- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form (Proof of Service of the Forwarding Address) which was signed by Landlord A.T. and a witness and indicates that the forwarding address letter and form were personally served to the landlord at 12:29 pm on November 1, 2020; and
- A copy of a Tenant's Direct Request Worksheet showing the amount of deposits paid by the tenants and indicating the tenancy ended on October 31, 2020.

Analysis

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the landlords were duly served with the forwarding address on November 1, 2020.

Section 38(1) of the *Act* states that within fifteen days of the tenancy ending and the landlord receiving the forwarding address, the landlord may either repay the deposits or make an application for dispute resolution claiming against the deposits.

I find that the fifteenth day for the landlords to have either returned the deposits or filed for dispute resolution was November 16, 2020.

However, section 90 of the *Act* states that a document sent by regular or registered mail is deemed received on the fifth day after it was sent. If the landlords sent the deposits by mail on their last day, the tenants may not have received the deposits until November 21, 2020.

I find that the tenants applied for dispute resolution on November 20, 2020, before they could have known whether the landlords complied with the provisions of section 38(1) of the *Act*, and that the earliest date the tenants could have applied for dispute resolution was November 22, 2020.

I find that the tenants made their application for dispute resolution too early.

Therefore, the tenants' application for a Monetary Order for the return of double the security deposit and the pet damage deposit is dismissed with leave to reapply.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the tenants' application for a Monetary Order for the return of double the security deposit and pet damage deposit with leave to reapply.

I dismiss the tenants' application to recover the filing fee paid for this application without leave to reapply.

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 18, 2020

Residential Tenancy Branch