



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

On October 22, 2020, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenants attended the hearing; however, the Landlord did not make an appearance at any point during the 31-minute teleconference. All in attendance provided a solemn affirmation. Tenant Z.G. confirmed that Tenant Z.N. was a Tenant of this tenancy, despite his name not appearing as a Tenant on the tenancy agreement. As such, Tenant Z.N.’s name was left as an Applicant on the Style of Cause of this Decision.

The Tenants advised that the Notice of Hearing and evidence package was served to the dispute address, which is where the Landlord moved into after their tenancy ended. This package was served by registered mail on November 15, 2020 (the registered mail tracking number is noted on the first page of this Decision). The tracking history indicated that this package was signed for by the Landlord on December 2, 2020. The Landlord also submitted evidence for consideration on this file.

Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was sufficiently served the Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written 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 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.

The Tenants advised that the tenancy started on June 15, 2018 and the tenancy ended when they gave up vacant possession of the rental unit on May 30, 2020. Rent was established at \$2,600.00 per month and it was due on the first day of each month. A security deposit of \$1,300.00 and a pet damage deposit of \$1,300.00 was also paid.

They stated that the Landlord returned their pet damage deposit in full on or around June 1, 2020. They advised that they agreed to allow the Landlord to keep \$200.00 from the \$1,300.00 security deposit; however, they did not provide the Landlord any authorization to withhold any more of the deposit. Despite this, the Landlord returned only \$400.00 of the remaining \$1,100.00 back to the Tenants on June 16, 2020. The Landlord is still holding the remaining \$700.00, without the Tenants' written authorization.

They provided the Landlord with their forwarding address in writing on June 17, 2020 and the Landlord subsequently made an Application to claim against the security deposit (the relevant file number is noted on the first page of this Decision). A Dispute Resolution proceeding was scheduled for October 19, 2020 and the Landlord failed to attend that hearing. As a result, her Application to claim against the remaining deposit was dismissed without leave to reapply.

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*.

Based on the undisputed evidence before me, a forwarding address in writing was provided by the Tenants on June 17, 2020. As the Landlord made a claim against the deposit on June 27, 2020 using that same address, I am satisfied that the Landlord received the Tenants' forwarding address in writing.

The consistent evidence is that the Landlord retained \$200.00 from the \$1,300.00 security deposit because the Tenants agreed to this. As well, the Landlord returned an additional \$400.00 to the Tenants on June 16, 2020, but she still retained \$700.00 of the deposit without the Tenants' written consent.

I find it important to note that Section 38 of the *Act* clearly outlines that once a forwarding address in writing is received, 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 a portion of the deposit without the Tenants' written consent.

As the Tenants confirmed that they agreed to allow the Landlord to keep \$200.00 of the security deposit, the remaining amount in dispute here is \$1,100.00. However, the Landlord returned an additional \$400.00 to the Tenants on June 16, 2020, a day before the Tenants provided their forwarding address in writing. As such, I am satisfied that the remaining \$700.00 of the Tenants' security deposit is the amount outstanding that the Landlord was required to either return in full, or make an Application to claim against, within 15 days of being provided with a forwarding address in writing.

While the Landlord made her Application to claim against the remaining security deposit on June 27, 2020, which was within 15 days of receiving the Tenants' forwarding address in writing, her Application was dismissed without leave to reapply. As she did not return the remaining \$700.00 within 15 days of receiving the Tenants' forwarding address in writing, and as her Application to claim the deposit was dismissed without leave to reapply, I am satisfied that the Landlord illegally withheld this remaining portion of the deposit contrary to the *Act*. Therefore, I find that the doubling provisions apply in

this instance and I grant the Tenants a monetary award of double the remaining security deposit, totaling **\$1,400.00**.

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 67 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Doubling of remaining security deposit	\$1,400.00
Recovery of filing fee	\$100.00
TOTAL MONETARY AWARD	\$1,500.00

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$1,500.00** 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: February 25, 2021

Residential Tenancy Branch