



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR, FFT

Introduction

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

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenants served the landlord with the notice of hearing package via XpressPost on December 27, 2020. The tenants stated that the landlord was served with their submitted 13 documentary evidence files vis XpressPost. The landlord disputed that no evidence was served. The tenants were unable to provide any proof of service or further details concerning the evidence package. Both parties confirmed the landlord served the tenants with his submitted 20 documentary evidence files via Canada Post Registered Mail on March 11, 2021. Neither party raised any other service issues. I accept the affirmed testimony of both parties and find that both parties have been properly served with the notice of hearing package via XpressPost on December 27, 2020. I find that the tenants submitted documentary evidence is excluded from consideration in this hearing as the landlord has disputed being served and the tenants were unable to provide any proof of service. I also find that as both parties have confirmed that the landlord served the tenants with his submitted documentary evidence that the tenants have been sufficiently served as per sections 88 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that this tenancy began on July 1, 2016 on a fixed term tenancy until June 30, 2017 and then ends as per the submitted copy of the signed tenancy agreement dated June 19, 2016. Despite both parties initialling section 2 (b) (ii), the tenancy continued on a month-to-month basis. The monthly rent was \$1,950.00 payable on the 1st day of each month. Both parties confirmed that a security deposit of \$975.00 and a pet damage deposit of \$975.00 were paid by the tenants to the landlord.

The tenant seeks a clarified monetary claim of \$2,050.00 which consists of:

\$975.00	Security Deposit Return
\$975.00	Pet Damage Deposit Return
\$1,950.00	
\$100.00	Filing Fee

The tenants stated that the tenancy ended on October 31, 2020. The landlord confirmed this date was the last day of the tenancy. The tenants stated that their forwarding address in writing was served to the landlord via text, email and then in writing in a letter prior to the end of the tenancy for return of both the security and pet damage deposit. The landlord confirmed in his direct testimony that he did receive the tenants forwarding address 3 ways as detailed by the tenants.

The landlord confirmed in his direct testimony that he did not return the security and pet damage deposits nor has he filed an application to dispute its return. During the hearing the landlord stated that he had held back the deposits do to damage caused by the tenants, but that he did not apply for compensation.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the

security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security and/or pet damage deposit(s).

In this case, I accept the undisputed affirmed evidence of both parties and find that the landlord failed to comply with section 38(1) of the Act, by returning the \$975.00 security and the \$975.00 pet damage deposits nor did the landlord apply to dispute its return within the allowed 15 day period. On this claim, I find that the tenants are entitled for a return of the entire \$975.00 security and the \$975.00 pet damage deposits, totalling \$1,950.00.

I also find pursuant to section 38(6), the landlord having failed to comply with section 38(1), the landlord is required to pay an amount equal to the combined deposits totalling, \$1,950.00 to the tenants.

The tenants are also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenants are granted a monetary order for \$4,000.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the 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: March 22, 2021

Residential Tenancy Branch