



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 Tenant's Application for Dispute Resolution. A participatory hearing was held, via teleconference, on March 16, 2021. The Tenant 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

The Tenant attended the hearing. However, the Landlord did not. The Tenant provided registered mail tracking information to show that he sent his Notice of Hearing, and evidence to the Landlord on December 26, 2020. The Tenant sent this package to the Landlord's address as listed on the Tenancy Agreement. Pursuant to section 89 and 90 of the Act, I find the Landlord is deemed to have received this package 5 days after it was mailed, December 31, 2020.

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. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

Background and Evidence

The Tenant confirmed that he paid a security deposit of \$1,400.00 and that the Landlord still holds this amount. Monthly rent was set at \$2,912.00, and was due on the first of the month. The Tenant stated that he moved out of the rental unit on September 2, 2020, which is the same day the move-out inspection was conducted.

A copy of this inspection report was provided into evidence, and the Tenant confirmed that he provided his forwarding address in writing, for the return of his deposit, at the bottom of this report. The Tenant stated that the Landlord kept the condition inspection report, and never returned any of his deposit, nor did they file an application against the deposit.

The Tenant confirmed that a move-in condition inspection report was also completed. The Tenant stated that he never authorized any deductions from the deposit.

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, the Tenant moved out of the rental unit on September 2, 2020, which I find reflects the end of the tenancy. I find the Landlord received the Tenant's forwarding address in writing this same day, when the Tenant completed the forwarding address section on the move-out inspection report.

I note the Tenant did not authorize any deductions from the security deposit. I also note that, as per the documentary evidence, there was a move-in and move-out inspection. There is no evidence that either party extinguished their right to claim against the security deposit.

Pursuant to section 38(1) of the Act, the Landlord had 15 days from receipt of the forwarding address in writing (until September 17, 2020) to either repay the security deposit (in full) to the Tenant or make a claim against it by filing an application for dispute resolution. The Landlord did neither and I find the Landlord breached section 38(1) of the Act.

Accordingly, as per section 38(6)(b) of the Act, I find the Tenant is entitled to recover double the amount of the security deposit (\$1,400.00 x 2). Further, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenant paid to make the application for dispute resolution.

In summary, I issued the Tenant a monetary order for \$2,900.00 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 **\$2,900.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant 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: March 16, 2021

Residential Tenancy Branch