



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-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 tenant for a Monetary Order for the return of double the security deposit (the deposit).

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on February 26, 2021, the tenant sent the landlord the Notice of Direct Request Proceeding by registered mail. The tenant provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the landlord is deemed to have been served with the Direct Request Proceeding documents on March 3, 2021, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation for the return of a security deposit pursuant to sections 38 and 67 of the *Act*?

Is the tenant 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 tenant submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by a landlord who is not the respondent and the tenant on April 14, 2019, indicating a monthly rent of \$3,800.00 and a security deposit of \$1,900.00, for a tenancy commencing on May 1, 2019
- A copy of a Two Month Notice to End Tenancy for Landlord's Use indicating that the respondent purchased, and would be moving into, the rental property
- A copy of a Mutual Agreement to End Tenancy which was signed by the landlord and the tenant on November 17, 2020, indicating the tenancy would end on December 4, 2020
- A copy of a letter from the tenant to the landlord dated December 22, 2020 providing the forwarding address and requesting the return of the deposit
- 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 indicates that the forwarding address was sent to the landlord by registered mail at 11:25 am on December 22, 2020
- A copy of a Canada Post Customer Receipt containing the Tracking Number to confirm the forwarding address was sent to the landlord on December 22, 2020
- A copy of a Tenant's Direct Request Worksheet showing the amount of deposit paid by the tenant, a partial reimbursement of \$582.03, and indicating the tenant vacated the rental unit on December 4, 2020

Analysis

Section 38(1) of the *Act* states that the landlord has fifteen days from the end of tenancy and the date they received the forwarding address to either return the deposit(s) in full or make an application for dispute resolution claiming against the deposit(s).

Section 38(6) of the *Act* states that if the landlord does not return the deposit(s) or file a claim against them within the fifteen days, the landlord must pay the tenant double the amount of the deposit(s).

I have reviewed all documentary evidence and I find that the tenant paid a security deposit in the amount of \$1,900.00 as per the tenancy agreement.

I accept the following declarations made by the tenant on the Tenant's Direct Request Worksheet:

- The tenant has not provided consent for the landlord to keep any of the deposit
- There are no outstanding Monetary Orders against the tenant for this tenancy
- The tenant has not extinguished their right to the deposit in accordance with sections 24(1) and 36(1) of the *Act*

I find that the tenancy ended on December 4, 2020, in accordance with the Mutual Agreement to End Tenancy.

In accordance with sections 88 and 90 of the *Act*, I find the landlord was deemed served with the forwarding address on December 27, 2020, five days after its registered mailing.

I accept the evidence before me that the landlord has failed to return the full deposit to the tenant and has not filed an Application for Dispute Resolution requesting to retain any portion of the deposit by January 11, 2021, within the fifteen days granted under section 38(1) of the *Act*.

Based on the foregoing, I find that the landlord must pay the tenant double the amount of the security deposit in accordance sections 38(6) of the *Act*.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application.

Therefore, as of the date of this application, February 15, 2021, I find that the tenant is entitled to a monetary award calculated as follows:

Item	Amount
Doubling of Security Deposit (\$1,900.00 x 2)	\$3,800.00
Less portion returned by landlord	-\$582.03
Recovery of Filing Fee	\$100.00
Total Monetary Award to Tenants	\$3,317.97

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the tenant a Monetary Order in the amount of \$3,317.97 for the return of double the security deposit and for the recovery of the filing fee for this application. The tenant is provided with this Order 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: March 12, 2021

Residential Tenancy Branch