



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order for the landlord to return the security deposit, under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. Landlord KA represents landlord AH. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Issues to be Decided

Are the tenants entitled to:

1. an order for the landlord to return the security deposit?
2. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained

Rule of Procedure 7.4 to the attending parties; it is the tenants' obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on February 15, 2020 and ended on November 30, 2020. Monthly rent was \$2,100.00 due on the fifteenth day of the month. At the outset of the tenancy a security deposit (the deposit) of \$1,050.00 was collected and the landlord currently holds it in trust.

The landlord confirmed he received the tenants' forwarding address in writing on November 30, 2020 and that the tenants did not authorize him to retain the deposit. The landlord did not submit an authorization asking for an authorization to retain the deposit. This application was filed on January 15, 2021.

Analysis

I accept the undisputed testimony that the tenancy ended on November 30, 2020, the landlords received the forwarding address in writing on November 30, 2020 and the tenants did not authorize the landlord to withhold the deposit. The landlord has not brought an application for dispute resolution claiming against the deposit and did not return the \$1,050.00 deposit.

Section 38(1) of the Act requires the landlord to either return the tenant's deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. Pursuant to section 38(6) of the Act, the landlord must pay a monetary award equivalent to double the value of the deposit:

- (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
 - (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,the landlord must do one of the following:
 - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
- [...]
- 6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Residential Tenancy Branch Policy Guideline 17 is clear that the arbitrator will double the value of the deposit when the landlord has not complied with the 15 day deadline; it states:

B. 10. The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.

11. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenants are entitled to a monetary award of \$2,100.00.

As the tenant were successful in this application, the tenants are entitled to recover the \$100.00 filing fee.

In summary:

ITEM	AMOUNT \$
Section 38(6) - doubling of \$1,050.00 deposit	2,100.00
Filing fee	100.00
TOTAL	2,200.00

Over the period of this tenancy, no interest is payable on the landlords' retention of the deposit.

Conclusion

Pursuant to sections 38(6)(b) and 72 of the Act, I grant the tenants a monetary order in the amount of \$2,200.00.

This order must be served on the landlords by the tenants. If the landlords fail to comply with this order the tenants may file the order in the Provincial Court (Small Claims) to 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: May 11, 2021

Residential Tenancy Branch