



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 tenants for a Monetary Order for the return of the security deposit (the deposit).

The tenants submitted two signed Proof of Service Tenant's Notice of Direct Request Proceeding forms which declare that on May 7, 2021, the tenants served each of the landlords the Notice of Dispute Resolution Proceeding - Direct Request by handing the documents to Person A, the property manager's assistant. The tenants had Person A sign the Proof of Service Tenant's Notice of Direct Request Proceeding forms to confirm personal service. Based on the written submissions of the tenants and in accordance with section 89 of the *Act*, I find that the landlords have been duly served with the Notice of Dispute Resolution Proceeding - Direct Request documents on May 7, 2021.

Issue(s) to be Decided

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

Are the tenants 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 tenants submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by one of the landlords and the tenants on February 24, 2020, indicating a monthly rent of \$1,650.00 and a security deposit of \$825.00, for a tenancy commencing on March 1, 2020

- A copy of an e-mail sent from the tenants to the landlords on March 16, 2021 providing the forwarding address and requesting the return of the deposit
- A copy of a reply e-mail from the landlords dated March 29, 2021
- 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 landlords by e-mail at 11:57 am on March 16, 2021
- A copy of a Tenant's Direct Request Worksheet showing the amount of deposit paid by the tenants and indicating the tenancy ended on February 28, 2021

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 tenants paid a security deposit in the amount of \$825.00, as per the tenancy agreement.

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

- The tenants have not provided consent for the landlords to keep all or part of the deposit
- There are no outstanding Monetary Orders against the tenants for this tenancy
- The tenants have not extinguished their right to the deposit in accordance with sections 24(1) and 36(1) of the *Act*.

I accept the tenants' statement on the Tenant's Direct Request Worksheet that the tenancy ended on February 28, 2021.

Section 71(2)(c) of the *Act* enables me to make an order that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this *Act*.

I find that the tenants sent their forwarding address to the landlords by e-mail, which is not a method of service permitted under section 88 of the *Act*. However, I am satisfied that the landlords received the tenants' forwarding address on the day the landlords replied to the tenants' e-mail.

For this reason, and in accordance with section 71(2)(c) of the *Act*, I find that the landlords have been served with the forwarding address on March 29, 2021.

I accept the evidence before me that the landlords have failed to return the deposit to the tenants and have not filed an Application for Dispute Resolution requesting to retain the deposit by April 13, 2021, within the fifteen days granted under section 38(1) of the *Act*.

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

Therefore, as of the date of this application, April 26, 2021, I find that the tenants are entitled to a monetary award in the amount of \$1,650.00, double the amount claimed by the tenants for the security deposit.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the tenants a Monetary Order in the amount of \$1,750.00 for the return of double the security deposit and for the recovery of the filing fee for this application. The tenants are provided with this Order in the above terms and the landlord(s) must be served with **this Order** as soon as possible. Should the landlord(s) 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: May 21, 2021

Residential Tenancy Branch