



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

On March 9, 2021, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for the Landlord to return of all or part of the pet damage deposit or security deposit,

This matter was set for hearing by telephone conference call at 1:30 pm on this date. The Tenant appeared at the hearing; however, the Landlord did not. The line remained open while the phone system was monitored for thirty minutes and the Landlord did not call into the hearing during this time.

The Tenant testified that he applied for a substituted service order and was granted permission to serve the Landlord with notice of the hearing using an email address that the parties used when discussing the tenancy. The Tenant provided a copy of an email sent to the Landlord’s email address on March 30, 2021 which included the Notice of Dispute Resolution Proceeding.

I find that the Landlord was sufficiently served with notice of the hearing for the purposes of the Act. The hearing proceeded.

The Tenant provided affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Is the Tenant entitled to the return of a security deposit?

Background and Evidence

The Tenant testified that the tenancy was for a room in a rooming house set to begin on February 1, 2021 on a month-to-month basis. Rent in the amount of \$700.00 was due to be paid by the first day of each month. The Tenant paid the Landlord a security deposit of \$350.00 using electronic transfer on sent on January 3, 2021. The Tenant provided a copy of the e-transfer bank record.

The Tenant testified that the Landlord did not prepare a written tenancy agreement. The terms of the tenancy are provided in text message conversations between the Landlord and Tenant.

The Tenant testified that the Landlord began harassing him to send the rent payment prior to the Tenants arrival from out of town. The Tenant stated he was concerned about fraud and did not agree to send the rent payment in advance.

The Tenant grew concerned and changed his mind and backed out of the tenancy. The Tenant provided his forwarding address to the Landlord via email dated March 10, 2021. The Tenant provided a copy of the email.

The Tenant testified that the Landlord did not return the security deposit to him and there was no agreement that the Landlord could keep the security deposit.

The Tenant is seeking the return of the \$350.00 security deposit. The Tenant waived his right to receive double the amount of the security deposit.

Analysis

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38 (6) of the Act provides that if a landlord does not comply with subsection (1), the landlord must pay the Tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the Tenant provided his forwarding address to the Landlord on March 10, 2021. There is no evidence before me that the Landlord applied for dispute resolution within 15 days of receiving the Tenant's forwarding address. I find that there was no agreement that the Landlord could retain the security deposit.

I find that the Landlord's failed to return the deposit to the Tenant. I find the Landlord breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlord must pay the Tenant double the amount of the security deposit and pet damage deposit. The Tenant waived his right to receive double the deposit.

I order the Landlords to pay the Tenants the amount of \$350.00. I grant the Tenant a monetary order in the amount of \$350.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord are cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord failed to return the security deposit to the Tenant in accordance with section 38 of the Act.

The Tenant is granted a monetary order in the amount of \$350.00.

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: July 29, 2021

Residential Tenancy Branch