



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD-DR, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The tenants originally applied under the direct request process but failed to submit copies of a signed tenancy agreement and a copy of their forwarding address given to the landlord as per Policy Guideline #49. That application was adjourned to a participatory hearing to allow the applicant an opportunity to make submissions and provide all the required documents.

The hearing was paused until 5 minutes past the start of the scheduled hearing time to allow both named parties an opportunity to attend, make submissions and present evidence.

The tenants attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend.

The tenants were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

The tenants provided undisputed affirmed testimony that the landlord was served with the notice of hearing package via Canada Post Registered Mail on May 10, 2021 and

has submitted a copy of the Canada Post Receipt and the Tracking label as confirmation. The tenants stated that they did check with the Canada Post Online tracking history which shows the package was received by the landlord. The tenants also stated that the landlord was served with all of the submitted documentary evidence via Canada Post Registered Mail on April 16, 2021.

This matter was set for a conference call hearing at 11:00 a.m. on this date. I waited until 17 minutes past the start of the scheduled hearing time in order to enable both parties to connect with this teleconference hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenants and I were the only persons who had called into this teleconference.

Rule 7 of the Rules of Procedure provides that:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.2 Delay in the start of a hearing

In the event of a delay of a start of a conference call hearing, each party must stay available on the line to commence the hearing for 30 minutes after the time scheduled for the start of the hearing.

In the event of a delay of a face-to-face hearing, unless otherwise advised, the parties must remain available to commence the hearing at the hearing location for 30 minutes after the time scheduled for the start of the hearing.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the landlord the hearing began.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of all or part of the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenants stated that their original tenancy was to end on June 30, 2020 but had ended on June 27, 2020 at the request of the landlord.

The tenants stated that a \$750.00 security deposit was paid to the landlord at the start of the tenancy. The tenants stated that no signed tenancy agreement was made, but that the landlord had repeatedly promised a signed tenancy agreement each time the tenants requested one.

The tenants stated that they provided their forwarding address in writing requesting the return of the \$750.00 security deposit to the landlord via Canada Post Registered Mail on July 15, 2020.

The tenants also stated that despite authorizing the landlord to retain the \$750.00 via a text message on July 1, 2020, the tenants rescinded this authorization on July 17, 2020 in another text message.

The tenants also stated that the landlord had previously filed an application (File number noted on the cover of this Decision) to retain the security deposit and a claim for damage(s) but that application was dismissed in a decision dated November 27, 2020 as the tenants were not served with the application for dispute. The tenants stated that they have not been served with any other applications by the landlord as of the date of this hearing and the landlord has not been authorized to retain the security deposit.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security and/or pet damage deposit(s).

In this case, I accept the undisputed affirmed evidence of the tenants and find on a balance of probabilities that the tenancy ended on June 27, 2020 and the tenants

provided their forwarding address in writing requesting the return of the \$750.00 security deposit via Canada Post Registered Mail on July 15, 2020.

Despite the tenants authorizing the landlord to retain the \$750.00 security deposit via the text message on July 1, 2020, it was rescinded in another text message to the landlord on July 27, 2020 by the tenants. I find that the rescinded authorization holds as it is clear as the landlord had filed an application (filed August 25, 2020) to dispute its return despite the landlord's application being dismissed for no service to the tenants on November 27, 2020.

As such, I find that the tenants are entitled to return of the original \$750.00 security deposit as per section 38(1) of the Act.

I also find pursuant to section 38(6) of the Act that the landlord having failed to return the \$750.00 security deposit nor did the landlord file an application for dispute of its return is liable an amount equal to the security deposit of \$750.00.

The tenants are entitled to return of the \$100.00 security deposit.

Conclusion

The tenants are granted a monetary order for \$1,600.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the 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: August 31, 2021

Residential Tenancy Branch