



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing, reconvened from an *ex parte* Direct Request proceeding, dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A return of their security deposit pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant TM attended, confirmed they represented both named applicants and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The tenant testified that they served the landlord with the Interim Decision and Notice of Hearing by registered mail sent on April 16, 2021. The tenant provided a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the landlord is deemed served with the tenants' materials on April 21, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

Issue(s) to be Decided

Are the tenants entitled to a return of their security deposit as claimed?

Are the tenants entitled to recover their filing fee from the landlord?

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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began in September 2018. The monthly rent at the start of the tenancy was \$2,100.00 payable on the first of each month. A security deposit of \$1,050.00 was paid at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at any time for this tenancy.

The tenants provided the landlord with their forwarding address in a letter on March 28, 2019 prior to the tenancy ending on April 2, 2019. The landlord submitted into documentary evidence a copy of the correspondence with their forwarding address and the landlord's subsequent correspondence confirming receipt of the forwarding address. The tenants did not provide written authorization that the landlord may retain any portion of the deposit for this tenancy.

Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit 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 section 38(6) of the *Act* equivalent to the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

I accept the evidence of the tenants that they provided their forwarding address in writing to the landlord on March 28, 2019 and the tenancy ended on April 2, 2019. I therefore find that the landlord had 15 days from April 2, 2019 to either return the security deposit in full or file an application for authorization to retain the deposit. I accept the evidence that the landlord did neither and has withheld the \$1,050.00 security deposit without the tenants' written authorization or an order from the Branch.

I further accept the evidence of the tenants that no condition inspection report was prepared at any time for this tenancy. Section 24 of the *Act* sets out that a landlord who

fails to prepare a condition inspection report or offer the tenants 2 opportunities to participate in an inspection extinguishes their right to claim against the deposit. The landlord has provided some written submissions regarding unpaid utilities which I find to be of no consequence. A landlord cannot unilaterally withhold the deposit without taking the appropriate legislative steps.

Based on the evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within 15 days of the end of the tenancy. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to an \$2,100.00 Monetary Order, double the value of the \$1,050.00 security deposit for this tenancy.

As the tenants were successful in their application they are also entitled to recover their filing fee from the landlord.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$2,200.00 against the landlord. The tenants are provided with a Monetary 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: September 7, 2021

Residential Tenancy Branch