



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 to obtain monetary compensation for the return of the security deposit (the deposit) and to recover the filing fee paid for the application.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the tenants on January 3, 2022.

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on January 14, 2022, the tenants sent the landlord the Notice of Dispute Resolution Proceeding - Direct Request by registered mail. The tenants provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this mailing.

Based on the written submissions of the tenants and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on January 14, 2022 and are deemed to have been received by the landlord on January 19, 2022, the fifth day after their registered mailing.

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

The tenant submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants, indicating a monthly rent of \$2,100.00 and a security deposit of \$900.00, for a tenancy commencing on December 1, 2018

- A copy of a notice to vacate which was signed by the tenants on October 31, 2021, indicating the tenancy would end as of November 30, 2021, and providing the tenants' the forwarding address
- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form which indicates that the forwarding address was sent to the landlord by registered mail on October 31, 2021
- A copy of a Security Deposit Statement which was signed by the landlord and the tenants on November 29, 2021, indicating there would be no deductions from the security deposit
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposit paid by the tenants and indicating the tenancy ended on November 30, 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 \$900.00, 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 landlord 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*.

On the Proof of Service of Forwarding Address form, the tenants have indicated they sent the forwarding address to the landlord by registered mail on October 31, 2021. However, on the Tenant's Direct Request Worksheet, the tenants have indicated that the notice to end tenancy with the forwarding address was handed to the landlord in person on October 30, 2021.

I find I am not able to confirm the date and method used to serve the landlord the notice to end tenancy with the tenants' forwarding address.

However, the tenants submitted a copy of a Security Deposit Statement form which was signed by the landlord on November 29, 2021 and includes the tenants' forwarding address. I am satisfied that the landlord had the tenants' forwarding address as of November 29, 2021.

I accept the tenants' statement on the Tenant's Direct Request Worksheet that the tenancy ended on November 30, 2021.

I accept the evidence before me that the landlord has failed to return the deposit to the tenants and has not filed an Application for Dispute Resolution requesting to retain the deposit by December 15, 2021, within the fifteen days granted under section 38(1) of the *Act*.

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

Therefore, I find that the tenants are entitled to a monetary award in the amount of \$1,800.00, 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 \$1,900.00 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 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: February 01, 2022

Residential Tenancy Branch