



Dispute Resolution Services

Page: 1

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

- A monetary award for the return of double the security deposit pursuant to sections 67 and 38; and
- to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

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

The landlord testified they were duly served with the tenants' materials and based on their undisputed testimony I find the landlord served in accordance with sections 88 and 89 of the Act. The landlord testified they have not served the tenants with any of their evidentiary materials provided to the Branch. As the landlord has not served the tenants, I have excluded the landlord's evidence from consideration.

At the outset of the hearing the tenants confirmed that they have received the full amount of double the security deposit from the landlord and withdrew that portion of their application. The tenants sought to recover the filing fee from the landlord.

Issue(s) to be Decided

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

Background and Evidence

The parties agree on the following facts. The security deposit for this tenancy was \$900.00. The tenancy ended on May 31, 2021. The tenants provided a forwarding address in writing on June 3, 2021 and again on June 7, 2021. The landlord returned \$900.00 to the tenants on July 30, 2021 and paid an additional \$900.00 on August 3, 2021 representing a total amount of \$1,800.00, double the value of the security deposit for this tenancy.

Analysis

Pursuant to section 72 of the Act I have the ability to order repayment of a fee for commencing a proceeding. Recovery of the filing fee is generally reserved for situations where a party is substantially successful in a meritorious application.

In the present case I accept the evidence of the parties that the landlord has returned double the security deposit for this tenancy by August 3, 2021. The tenants have withdrawn the substantive portion of their application as the issue has been resolved.

I find no basis for the issuance of an order allowing recovery of the filing fees. The tenants have withdrawn the primary portion of their application and the evidence is that the issue has long been resolved. Accordingly, I dismiss the portion of the tenants application seeking recovery of the filing fee.

Conclusion

I dismiss the tenants' application in its entirety without leave to reapply.

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 8, 2022

Residential Tenancy Branch