



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 was reconvened as a result of the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- an order for the return of the security deposit pursuant to section 38; and
- authorization to recover the Tenants' filing fee for their application from the Landlord pursuant to section 72.

The Tenants ("HS" and "DS") and the Landlord attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing was reconvened from a non-participatory, *ex parte*, "direct request" proceeding. In an interim decision dated August 10, 2021 ("Interim Decision"), the presiding adjudicator determined that a participatory hearing was necessary to address questions that could not be resolved on the documentary evidence submitted by the Tenants. As a result, this hearing was scheduled and came on for hearing on February 8, 2022, to consider the Tenants' application. Notices of the reconvened hearing were enclosed with the Interim Decision. The Tenants were instructed to serve the Notice of Dispute Resolution Proceeding ("NDRP"), the Interim Decision and all other required documents, on the Landlord within three days of receiving the Interim Decision, in accordance with section 89 of the Act.

HS testified the Tenants served the NDRP on the Landlord by email on August 12, 2021. The Landlord disputed receiving the NDRP from the Tenants but received a copy from the Residential Tenancy Branch ("RTB") on August 12, 2021, and another copy from the RTB on February 1, 2022. I find the Landlord was sufficiently served with the NDRP pursuant to section 71(2)(b) of the Act. HS stated the Tenants served the Landlord with additional evidence by registered mail on January 21, 2022. HS submitted the tracking number for

service of the additional evidence. I find the Tenants' additional evidence was served in accordance with section 88 of the Act.

The Landlord confirmed he did not serve any evidence on the Tenants for this proceeding.

Issues to be Decided

Are the Tenants entitled to:

- a monetary order of \$1,800.00, representing the return of double the security deposit?
- recover the filing fee of the Tenants' application from the Landlord?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Tenants' application and my findings are set out below.

The Landlord stated the tenancy commenced on September 14, 2019, with rent of \$900.00 payable on the 1st day of each month. The Tenants were to pay a security deposit of \$900.00. HS submitted a bank statement indicating the withdrawal of \$900.00 on September 14 and withdrawal of another \$900.00 on September 17, 2019, to corroborate his testimony the Tenants paid \$900.00 for rent and \$900.000 for the security deposit. The Landlord confirmed the Tenants paid the \$900.00 security deposit.

HS stated the Tenants vacated the rental unit on April 30, 2021. HS stated the Landlord did not conduct a move-in condition inspection and no move-condition report was made. HS stated the Tenants were not given at least one opportunity to participate in a move-in condition inspection. HS stated the Landlord did not conduct a move-out condition inspection and no move-out condition report was made. He stated the Tenants were not given at least one opportunity to participate in a move-out condition inspection.

HS stated the Tenants provided their forwarding address in writing, on Form RTB-47, to the Landlord by registered mail on May 4, 2021. HS submitted a Proof of Service on Form RTB-41, together with the signature of the Landlord acknowledging receipt of the registered mail package, to corroborate his testimony. I find that the Tenants' forwarding

address was served on the Landlord in accordance with section 88 of the Act. HS stated the Landlord has never returned the Tenants security deposit.

The Landlord admitted he did not return the security deposit or make an application for dispute resolution to seek unpaid rent and/or damages from the Tenants.

Analysis

Section 38(1) of the Act states:

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the testimony of HS, I find the tenancy ended on April 30, 2021, and that the Tenants provided the Landlord with their forwarding address in writing, by registered mail, on May 4, 2021. Pursuant to section 90 of the Act, the Landlord was deemed to have received the Tenants' forwarding address on May 9, 2021. Pursuant to section 38(1), the Landlord had until May 24, 2021, being 15 days after deemed receipt of the forwarding address, to return the deposit of \$900 to the Tenants or, alternatively, make an application for dispute resolution claiming against the security deposit.

The Landlord did not return the security deposit to the Tenants within 15 days of the deemed receipt of the Tenants' forwarding address. I find the Landlord did not make an application for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding address from the Tenants.

Based on the above, I find the Landlord failed to comply with his obligations under section 38(1) of the Act.

The Tenants' right to the return of the security deposit has not been extinguished by either section 24 or 36 of the Act. Section 38(6) of the Act states:

- (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) *must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

[emphasis in italics added]

The language of section 38(6)(b) is mandatory. As the Landlord has failed to comply with section 38(1), I must order that he pay the Tenants double the amount of the security deposit for a total of \$1,800.00.

Pursuant to section 72(1) of the Act, as the Tenants have been successful in their application, they may recover the filing fee from the Landlord.

Conclusion

Pursuant to sections 65 and 72 of the Act, I order that the Landlord pay the Tenants \$1,900.00, representing an amount equal to two times the amount of the original \$900.00 security deposit paid by the Tenants to the Landlord, plus reimbursement of the Tenants' filing fee of \$100.00.

The Tenants must serve this decision and attached order on the Landlord as soon as possible after receiving a copy of it from the Residential Tenancy Branch.

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 25, 2022

Residential Tenancy Branch