



Dispute Resolution Services

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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 double 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 March 27, 2022.

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on April 1, 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 April 1, 2022 and are deemed to have been received by the landlord on April 6, 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

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The tenants submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord on September 22, 2020 and the tenants on September 25, 2020, indicating a monthly rent of \$2,200.00 and a security deposit of \$1,100.00, for a tenancy commencing on November 1, 2020
- A copy of an e-mail sent from the tenants to the landlord on January 14, 2022 providing the forwarding address
- A copy of a reply e-mail from the landlord dated January 23, 2022
- 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 e-mail at 3:17 pm on January 14, 2022
- 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 January 1, 2022

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 tenants 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 \$1,100.00, 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*

I accept the tenants' statement on the Tenant's Direct Request Worksheet that the tenancy ended on January 1, 2022.

Section 71(2)(c) of the *Act* enables me to make an order that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this *Act*.

I find that the tenants sent their forwarding address to the landlord by e-mail. However, I find the tenants have not provided any evidence to demonstrate the landlord agreed to receive documents by e-mail, which is a requirement of section 43(1) of the *Residential Tenancy Regulations*.

However, I am satisfied that the landlord received the tenants' forwarding address on the day the landlord replied to the tenants' e-mail.

For this reason, and in accordance with section 71(2)(c) of the *Act*, I find that the landlord has been served with the forwarding address on January 23, 2022.

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 February 7, 2022, 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 \$2,200.00, the amount claimed by the tenants for double 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 \$2,300.00 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: May 02, 2022