



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A participatory hearing was held, via teleconference, on December 20, 2022. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- An order that the Landlord return all or part of the security deposit or pet damage deposit;

Both Tenants and both Landlords attended the hearing. All parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord confirmed receipt of the Tenant's Notice of Dispute Resolution Proceeding and evidence package. The Tenants denied getting any package of evidence from the Landlords. The Landlords stated they mailed their evidence but did not have any proof of service. Given the lack of evidence supporting proof of service, I find the Landlords have not sufficiently served the Tenants with their package. I find the Landlords' evidence is not admissible.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

Background and Evidence

The parties confirmed the tenancy started on July 1, 2021, and ended on October 31, 2021. Both parties also agreed that the Tenants paid a security deposit of \$675.00.

The parties confirmed that a move-in inspection was completed, but a move-out inspection was not completed. The Landlords stated they were not sure if the Tenants were actually going to move out at the end of October 2021, so they didn't schedule a time to do the inspection. The Landlords confirmed they did not attempt to schedule a move-out inspection after the Tenant's moved out either.

The Tenants stated that they provided the Landlords with their forwarding address in writing, by leaving a letter at the Landlord's front door on November 10, 2021. The Tenants provided a proof of service document which was signed by a witness. The Tenants also provided a copy of the forwarding address document they left at the door. The Landlords deny getting this forwarding address in writing.

The Tenants confirmed that the Landlords returned \$535.00 of the security deposit, via e-transfer on November 3, 2021. The Landlords did not file an application against the deposit, and the Tenants refute they agreed the Landlord could retain any amounts for cleaning.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, both parties confirmed that the Tenants moved out of the rental unit on October 31, 2021, which I find reflects the end of the tenancy. I note the Landlords stated they never received the Tenants' forwarding address in writing. However, in contrast to this, the Tenants stated they left it at the Landlord's front door on November 10, 2021, and they provided a signed and witnessed proof of service document to corroborate this. I find it more likely than not that the Tenants left this document at the Landlord's front door. Pursuant to section 90 of the Act, I find the Landlords are deemed served with the Tenants' forwarding address on November 13, 2021, 3 days after it was posted.

Both parties agree that the Landlord returned \$535.00 of the \$675.00 security deposit held. However, I note the Tenants did not agree or authorize the Landlord to retain any amount. I find no evidence that the Landlords had any right to retain any money from the security deposit held, and in doing so without following through on an application to claim against the deposit, they breached section 38(1) of the Act.

Accordingly, as per section 38(6)(b) of the Act, I find the Tenants are entitled to recover double the amount of the security deposit (\$675.00 x 2), previously held by the Landlords, less the amount the Landlords have already given back. Further, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenants paid to make the application for dispute resolution.

In summary, I make the monetary order as follows:

Item	Amount
Return of Double security deposit (\$1,300.00 x 2)	\$1,350.00
Filing Fee	\$100.00
Less: Returned Portion of Security Deposit	(\$535.00)
Total Monetary Order	\$915.00

Accordingly, pursuant to section 67 of the *Act*, I grant the above monetary order based on the Landlord's failure to deal with the security deposit in accordance with section 38 of the *Act*.

Conclusion

I grant the Tenants a monetary order in the amount of **\$915.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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: December 21, 2022

Residential Tenancy Branch