



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of the security and pet damage deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 15 minutes. The tenants attended and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant IC (the "tenant") primarily spoke for both co-tenants.

The tenant testified that they served the landlord with their application for dispute resolution dated August 31, 2018 by registered mail sent on September 8, 2018 to the landlord's address for service on the tenancy agreement. The tenant provided a Canada Post tracking number as evidence of service. Based on the tenant's evidence I find that the landlord was deemed served with the application and evidence on September 13, 2018 in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their security and pet damage deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant provided the following facts. This tenancy began in September 2017 and ended in December 2017. The monthly rent was \$1,925.00 payable on the first of each month. A security deposit of \$940.00 and pet damage deposit of \$300.00 were paid at the start of the tenancy. No condition inspection report was prepared at either the start or the end of the tenancy.

The tenancy ended on December 1, 2017. The tenant provided a forwarding address to the landlord by text message on December 2, 2017. The tenant received a cheque dated January 15, 2018 for the amount of \$1,015.00 returning a portion of the security and pet damage deposit for this tenancy. The tenant testified that they did not agree to the deduction of \$225.00 from the deposit in writing or at all.

The tenant provided a forwarding address to the landlord in writing by a letter dated August 10, 2018 and requested the return of the balance of \$225.00 from the security and pet damage deposit. The tenant testified that they received no reply from the landlord.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security and pet damage deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security and pet damage deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

Additionally, section 24 of the *Act* provides that if the landlord does not complete a condition inspection report in accordance with the guidelines, they extinguish their right to claim against the security and pet damage deposit.

The tenant gave evidence that they provided a forwarding address by text message on December 2, 2017 and again by letter dated August 10, 2018. As the tenant acknowledges in their submissions, text message is not a prescribed manner for service

of a forwarding address in the *Act*. I find that the landlord was first deemed served with the tenants' forwarding address on August 15, 2018, five days after the letter of August 10, 2018 was mailed in accordance with sections 88 and 90 of the *Act*.

The landlord had 15 days from August 15, 2018 to either return the balance of the security and pet damage deposit of \$225.00 or file an application to retain the deposits. The landlord did not do so.

I accept the tenant's evidence that they had earlier received a return of \$1,015.00 of the deposits for this tenancy. I accept the tenant's evidence that they did not waive their right to obtain the full amount of the deposits. I find that the landlord deducted the amount of \$225.00 without written authorization from the tenants or order from the Branch. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$450.00 Monetary Order, double the value of the outstanding security and pet damage deposit not yet returned to the tenants. No interest is payable over this period.

As the tenants' application was successful the tenants may also recover the \$100.00 filing fee for this application.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$550.00 against the landlord. The tenants are provided with a Monetary 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: January 7, 2019

Residential Tenancy Branch