



Dispute Resolution Services

Page: 1

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. The participatory hearing was held, by teleconference, on April 26, 2019. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for the return of the security deposit

Both parties were present at the hearing and provided testimony. Both parties 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 Tenants' documentary evidence, application, and amendment. The Landlord stated he sent the Tenants his evidence by registered mail on April 15, 2019. The Tenants stated they never got this package. However, I note that failure to pick up registered mail is not a ground for review. In the absence of actual service, I may deem a package has been sufficiently served for the purposes of this Act. Pursuant to section 88 and 90 of the Act, I deem the Tenants were served with this evidence 5 days after it was mailed, on April 20, 2019. As stated in the hearing, and as per Rule of Procedure 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. Since the Landlord's evidence was served late it will not be considered.

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

Issues 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?
2. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

Both parties agree that:

- The tenancy ended on November 30, 2018, the day the Tenants moved out
- The Tenants provided, and the Landlord received, their forwarding address in writing on December 4, 2018.
- The Landlord still holds the Tenants' security deposit in the amount of \$1,600.00
- The Landlord has not yet filed an application against the Tenants for monetary compensation.

Since the Landlord did not return their deposit, the Tenants are looking for double the deposit.

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, the evidence confirmed the Landlord was in receipt of the Tenants' forwarding address in writing on December 4, 2018, 4 days after they moved out. Therefore, the Landlord had until December 19, 2018, to either repay the security deposit to the Tenants or make a claim against it by filing an application for dispute resolution. The Landlord did neither and did not return the deposit. Accordingly, I find the Tenants are entitled to recover double the amount of the security deposit held by the Landlord (2x\$1,600.00=\$3,200.00) pursuant to section 38(6) of the *Act*.

Pursuant to section 72 of the Act, and given the Tenants' were successful in their application, I award them recovery of the filing fee they paid for this application. Accordingly, pursuant to section 67 of the *Act*, I grant the Tenants a monetary order in the amount of \$3,300.00, which is due to the Landlord's failure to deal with the security deposit in accordance with section 38 of the *Act*, and \$100.00 in recovery of the filing fee.

Conclusion

I grant the Tenants a monetary order in the amount of \$3,300.00. 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: April 29, 2019

Residential Tenancy Branch