



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 Tenant's Application for Dispute Resolution. A participatory hearing was held, via teleconference, on May 28, 2020. The Tenant 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

The Tenant and the Landlords all attended the hearing. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlords confirmed receipt of the Tenant's application and evidence, and did not take issue with the service of this package. The Landlords stated that they did not serve the Tenant with their evidence and only uploaded it to the dispute access website. As stated in the hearing, the Landlords were required to serve the Tenant with their evidence no later than 7 days before the hearing, as per the rules of procedure. As the Landlords have not served the Tenant with their evidence, it is not admissible in the proceeding today. The Landlords relied on oral testimony only.

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. Is the Tenant 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 that the Tenant paid a security deposit of \$550.00. The parties also confirmed that the Tenant moved out of the rental on December 15, 2019, and a move-out inspection was done on this day. The Tenant provided registered mail tracking information to show that he mailed the Landlords his forwarding address in writing on December 31, 2019. The Landlord acknowledged getting this package but did not recall when.

The Tenant acknowledges receiving back \$400.00 from the Landlord on December 15, 2019, after the move-out inspection was done. The Landlords stated they had an agreement with the Tenant where they could keep \$150.00 of the security deposit, which is why they only returned \$400.00. However, the Landlords did not have any admissible evidence to demonstrate this agreement was made or that it was in writing. The Tenant denies that he ever agreed to any deductions from his deposit. The Landlords never filed an application against 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, both parties confirmed that the Tenant moved out of the rental unit on December 15, 2019, which is the same day the move-out inspection was done. I find this date reflects the end of the tenancy.

The Landlords confirmed they received the Tenant's forwarding address in writing but were not clear when they received the package. The Tenant provided proof of mailing to show he sent his forwarding address in writing on December 31, 2019. Pursuant to section 88 and 90 of the Act. I find the Landlords are deemed served with this package on January 5, 2020, the fifth day after it was mailed.

Although the Landlords stated the Tenant agreed they could keep \$150.00 from the deposit, I find there is insufficient evidence to support that any agreement was made or that it was in writing. The Tenant stated he did not authorize any deductions from the security deposit.

Pursuant to section 38(1) of the Act, the Landlords had 15 days from receipt of the forwarding address in writing or the end of the tenancy, whichever is later. In this case, the latter of those dates is January 5, 2020, the date the Landlords were deemed served with the Tenant's forwarding address in writing. I find the Landlords had until January 20, 2020, to either repay the security deposit (in full) to the Tenant or make a claim against it by filing an application for dispute resolution. The Landlords did neither and I find the Landlords breached section 38(1) of the Act. Although the Landlords returned some of the deposit, I note that, by not returning it in full, without authorization to do so, they breached section 38(1).

Accordingly, as per section 38(6)(b) of the Act, I find the Tenant is entitled to recover double the amount of the security and pet deposit (\$550.00 x 2), less the amount already returned (\$400.00). Further, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was successful in this hearing, I also order the Landlords to repay the \$100.00 fee the Tenant paid to make the application for dispute resolution.

In summary, I make the monetary order as follows:

Item	Amount
Return of Double security deposit (\$550.00 x 2)	\$1,100.00
Filing Fee	\$100.00
Less: Returned Portion of Security Deposit	(\$400.00)
Total Monetary Order	\$800.00

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 Tenant a monetary order in the amount of **\$800.00**. This order must be served on the Landlords. If the Landlords fail to comply with this order the Tenant 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: May 28, 2020

Residential Tenancy Branch