



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's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing. The tenants attended and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenants testified that they served their application for dispute resolution and evidence on the landlord by registered mail sent to the landlord's address for service on or about January 3, 2019. The tenant provided Canada Post tracking information as evidence of service. Based on the testimony of the tenant I find that the landlord is deemed served with the tenants' materials on January 8, 2019, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a return of all or a portion of the security deposit?
Are the tenants entitled to recover their filing fee from the landlord?

Background and Evidence

The tenants paid a security deposit of \$850.00 for this periodic tenancy. The tenants provided a forwarding address on a Mutual Agreement to End Tenancy dated December 31, 2017 and the tenancy ended January 31, 2018. The tenants did not provide written authorization that the landlord may retain any portion of the deposit for this tenancy. As of the date of the hearing no amount of the deposit has been returned.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security 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 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).

I accept the tenants' evidence that they provided their forwarding address in writing to the landlord on December 31, 2017, prior to the tenancy ending. I accept the evidence that the tenancy ended January 31, 2018. I accept the evidence that the tenants have not provided written authorization that the landlord may retain any portion of the deposit for this tenancy and that the returned has not returned any amount of the deposit.

Based on the evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within 15 days of the tenancy ending on January 31, 2018 after they had received the tenant's forwarding address. I accept the tenants' evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to an \$1,700.00 Monetary Order, double the value of the \$850.00 security deposit held by the landlord.

As the tenants were successful in their application they are also entitled to recover their filing fee from the landlord.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$1,800.00 against the landlord, allowing them to recover double the value of the security deposit for this tenancy and the filing fee.

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: May 29, 2020

Residential Tenancy Branch