



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 38.1 of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for the return of double the security deposit (the deposit).

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on September 10, 2020, the tenant sent the landlord the Notice of Direct Request Proceeding by registered mail. The tenant provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the landlord is deemed to have been served with the Direct Request Proceeding documents on September 15, 2020, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation for the return of a security deposit pursuant to sections 38 and 67 of the *Act*?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The tenant submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on September 4, 2016, indicating a monthly rent of \$2,200.00 and a security deposit of \$1,100.00, for a tenancy commencing on September 15, 2016;

- A copy of an e-mail from the tenant to the landlord dated April 17, 2020, providing the forwarding address and requesting the return of the deposit;
- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form (Proof of Service of the Forwarding Address) which indicates that the forwarding address was sent to the landlord by e-mail at 3:00 pm on April 17, 2020;
- A copy of seventeen e-mails exchanged between the landlord and the tenant including a reply to the tenant's forwarding address e-mail dated April 18, 2020; and
- A copy of a Tenant's Monetary Order Worksheet for an Expedited Return of Security Deposit and/or Pet Damage Deposit (the Monetary Order Worksheet) showing the amount of deposit paid by the tenant, an authorized deduction in the amount of \$167.69, and indicating the tenancy ended on April 1, 2020.

Analysis

Section 38(1) of the *Act* states that the landlord has fifteen days from the end of tenancy and the date they received the forwarding address to either return the deposit(s) in full or make an application for dispute resolution claiming against the deposit(s).

Section 38(6) of the *Act* states that if the landlord does not return the deposit(s) or file a claim against them within the fifteen days, the landlord must pay the tenant double the amount of the deposit(s).

I have reviewed all documentary evidence and I find that the tenant paid a security deposit in the amount of \$1,100.00, as per the tenancy agreement.

I accept the following declarations made by the tenant on the Monetary Order Worksheet:

- The tenant has only provided consent for the landlord to keep \$167.69 of the deposit;
- There are no outstanding Monetary Orders against the tenant for this tenancy; and
- The tenant has not extinguished their right to the deposit in accordance with sections 24(1) and 36(1) of the *Act*.

I accept the tenant's statement in the Monetary Order Worksheet that the tenancy ended on April 1, 2020.

The Residential Tenancy Branch's Director's Order on e-mail service dated March 30, 2020 provides that a document required to be sent in accordance with sections 88 and 89 of the *Act* may be sent by e-mail and is considered received if the recipient replies to the e-mail.

The tenant submitted a copy of an e-mail dated April 17, 2020 providing the forwarding address. The tenant also submitted a copy of a reply e-mail from the landlord dated April 18, 2020.

Based on the written submissions of the tenant and in accordance with the Director's Order, I find that the landlord is deemed to have been served with the forwarding address on April 18, 2020, the date they replied to the tenant's e-mail.

I accept the evidence before me that the landlord has failed to return the balance of the deposit to the tenant and has not filed an Application for Dispute Resolution requesting to retain the deposit by May 3, 2020, within the fifteen days granted under section 38(1) of the *Act*.

Based on the foregoing, I find that the landlord must pay the tenant double the amount of the security deposit in accordance sections 38(6) of the *Act*.

When calculating how the deposit is doubled, Policy Guideline #17 provides that any amount the tenant has agreed the landlord may retain from the deposit for monies owing for other than damage to the rental is excluded from the doubling calculation.

I find that the tenant authorized a deduction of \$167.69 for utility bills, which is not considered damage. For this reason, the utility deduction will not be factored into the calculation for doubling the deposit.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application.

Therefore, as of the date of this application, September 3, 2020, I find that the tenant is entitled to a monetary award in the amount of \$1,964.62, calculated as follows:

Item	Amount
Unreturned Security Deposit (\$1,100.00 - \$167.69)	\$932.31
Doubling of the unreturned portion	\$932.31
Recovery of Filing Fee	\$100.00
Total Monetary Award to Tenants	\$1,964.62

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the tenant a Monetary Order in the amount of \$1,964.62 for the return of double the security deposit and for the recovery of the filing fee for this application. The tenant is provided with this 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: September 16, 2020

Residential Tenancy Branch