Dispute Resolution Services

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 tenants for a Monetary Order for the return of the security deposit (the deposit).

The tenants submitted two signed Proof of Service Tenant's Notice of Direct Request Proceeding forms which declare that on September 26, 2020, the tenants sent each of the landlords the Notice of Direct Request Proceeding by registered mail. The tenants provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the tenants and in accordance with sections 89 and 90 of the *Act*, I find that the landlords are deemed to have been served with the Direct Request Proceeding documents on October 1, 2020, the fifth day after their registered mailing.

Issue(s) to be Decided

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

Are the tenants 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 tenants submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and Tenant S.C. on May 9, 2019, indicating a monthly rent of $1,000.00 and a security deposit of $500.00, for a tenancy commencing on June 1, 2019;

- A copy of a text message from the tenants to the landlords dated August 30, 2020, providing the forwarding address and a copy of a reply text message from the landlord also dated August 30, 2020;

- 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 landlords by text message at 10:28 am on August 30, 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 tenants, a partial reimbursement of $425.00, and indicating the tenancy ended on August 31, 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 tenants paid a security deposit in the amount of $500.00, as per the tenancy agreement.

I accept the following declarations made by the tenants on the Monetary Order Worksheet:
- The tenants have not provided consent for the landlord to keep all or part of the deposit;
- There are no outstanding Monetary Orders against the tenants for this tenancy; and
- The tenants have not extinguished their right to the deposit in accordance with sections 24(1) and 36(1) of the *Act*.

I accept the tenants' statement on the Monetary Order Worksheet that the tenancy ended on August 31, 2020.

Section 71(2)(c) of the *Act* enables me to make an order that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this *Act.*

I find that the tenants sent their forwarding address to the landlords by text message, which is not a method of service permitted under section 88 of the *Act*. However, I am satisfied that the landlords received the tenants' forwarding address on the day the landlords replied to the tenants' message.

For this reason, and in accordance with section 71(2)(c) of the *Act*, I find that the landlords have been served with the forwarding address on August 30, 2020.

I accept the evidence before me that the landlords have failed to return the full deposit to the tenants and has not filed an Application for Dispute Resolution requesting to retain a portion of the deposit by September 15, 2020, within the fifteen days granted under section 38(1) of the *Act.*

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

As the tenants were successful in this application, I find that the tenants are entitled to recover the $100.00 filing fee paid for this application.

Therefore, as of the date of this application, September 21, 2020, I find that the tenants are entitled to a monetary award calculated as follows:

Item	Amount
Doubling of Security Deposit ($500.00 x 2)	$1,000.00
Less portion returned to the tenant	- $425.00
Recovery of Filing Fee	$100.00
Total Monetary Award to Tenants	**$675.00**

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the tenants a Monetary Order in the amount of $675.00 for the return of double the security deposit and for the recovery of the filing fee for this application. The tenants are provided with this Order in the above terms and the landlord(s) must be served with **this Order** as soon as possible. Should the landlord(s) 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: October 14, 2020

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Residential Tenancy Branch