



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD-DR, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

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

The tenants' agent, D.A. (the tenants) attended the hearing via conference call and provided affirmed testimony. The landlord, C.L. (the landlords) attended the hearing via conference call and provided affirmed testimony. D.A. stated that he was acting on behalf of both named tenants and that neither would be attending the hearing. C.L. stated that he was appearing on behalf of the other named landlord, K.T.

The tenants stated that the landlords were served with the notice of hearing package in person on November 16, 2020 and the submitted 13 document evidence files on February 11, 2021 "leaned on door" of the landlords. The landlords confirmed receipt of these documents as claimed by the tenants. The landlords served the tenants with 13 of the 16 documentary evidence files via text message on October 6, 2020 and the remaining 3 files via email on February 23, 2020. The tenants disputed that no documentary evidence files were received via text on October 6, 2020, but confirmed the receipt of the landlords' subsequent 3 files via email. The landlord stated that he does not have any proof of service regarding the 13 documentary evidence files served via text message.

I accept the affirmed testimony of both parties and find that the landlords were sufficiently served with the notice of hearing package and the subsequent 3

documentary evidence files via email and are deemed served as per sections 88 and 89 of the Act. The landlords are deemed served with the tenants' submitted documentary evidence as per section 90 of the Act.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on October 1, 2017 on a fixed term tenancy ending on September 30, 2018 as per the submitted copy of the signed tenancy agreement dated August 4, 2017. The monthly rent was \$925.00 payable on the 1st day of each month and a security deposit of \$462.50 was paid on October 1, 2017. Both parties confirmed that a pet damage deposit was paid, but that it was returned and is not an issue.

The tenants seek a monetary claim of \$562.50 which consists of:

\$462.50	Return of Original Security Deposit
\$100.00	Filing Fee

The tenants stated that the tenancy ended on August 31, 2020 and that the landlords were provided with the tenants forwarding address in writing on October 12, 2020 as part of the tenants' application for dispute for return of the \$462.50 security deposit. The tenants stated that the landlords have not returned the security deposit since this application was served.

The landlords confirmed that they currently hold the \$462.50 security deposit and have not returned it or filed an application to dispute its return. The landlords stated that there were some issues with damage that have still not been resolved.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within

15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, I accept the undisputed affirmed evidence of both parties that the tenancy ended on August 31, 2020 and that the landlord currently holds a \$462.50 security deposit. Both parties confirmed that the landlords have not returned it nor have the landlords' applied for dispute for returning it to the tenants. On this basis, I find that the tenants have established a claim for return of the original \$462.50.

However, the tenants failed to provide notice to the landlords for return of the security deposit prior to the application for dispute being served. On this basis, I find that the landlords were not given an opportunity to respond as per section 38 (1) and on this basis, the tenants are not entitled to compensation under section 38(6).

The tenants having been successful in their application are entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenants are granted a monetary order for \$562.50.

This order must be served upon the landlords. Should the landlords fail to comply with this order, the 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: February 25, 2021

Residential Tenancy Branch