



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GARDEN CONSTRUCTION LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNSD, FFT

Introduction

This hearing originated as a Direct Request proceeding. In an Interim Decision dated March 18, 2021 a participatory hearing was ordered. This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Tenant C.L. and an agent for the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

The Interim Decision states:

Notices of Reconvened Hearing are enclosed with this interim decision. The Tenants must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon each of the Landlords within three (3) days of receiving this decision in accordance with section 89 of the *Act*.

Tenant C.L. testified that he served the landlord with the above documents via registered mail on March 22, 2021. A registered mail receipt for same was entered into evidence. The agent testified that he did not know when the landlord received the tenants' application for dispute resolution but assumes it was received. Based on tenant C.L.'s testimony and the registered mail receipt, I find that the landlord was served via registered mail in accordance with section 89 of the *Act*. I find that the landlord is deemed to have received the above documents, pursuant to section 90 of the *Act*, on March 27, 2021, five days after their mailing.

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 1, 2011 and ended on August 31, 2020. Monthly rent in the amount of \$1,047.00 was payable on the first day of each month. A security deposit of \$438.00 was paid by the tenants to the landlord. The security deposit was not returned to the tenants.

Tenant C.L. testified that he emailed the landlord's head office with his forwarding address and personally served the manager of the subject rental building with his forwarding address. The tenant could not recall the date the email was sent or the date the building manager was served.

The agent testified that the landlord received the tenants' forwarding address via email on November 5, 2020.

The agent testified that the security deposit was not returned to the tenants because they damaged the subject rental property. The agent testified that the landlord did not file an application for dispute resolution seeking authorization to retain the tenants' security deposit until July of 2021.

The tenant testified that the landlords were not provided with written authorization to retain any portion of their deposit. The agent did not dispute this testimony.

Analysis

Based on the testimony of both parties, I find that the landlord was sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act*, with the tenants' forwarding address via email on November 5, 2020 as the agent confirmed receipt on that day.

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to 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 tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I accept tenant C.L.'s undisputed testimony that the landlord was not provided with written authorization to retain any portion of the tenants' security deposit.

In this case, the landlord did not file an application to retain the tenants' security deposit or return the security deposit, within 15 days of the tenants' provision of their forwarding address. Therefore, pursuant to section 38(6)(b) of the *Act*, the tenants are entitled to receive double their security deposit in the amount of \$876.00.

As the tenants were successful in this application for dispute resolution, I find that they are entitled to recover the \$100.00 filing fee from the landlords, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenants in the amount of \$976.00.

The tenants are 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: August 13, 2021

Residential Tenancy Branch