



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-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 to obtain monetary compensation for the return of double the security deposit and the pet damage deposit (the deposits) and to recover the filing fee paid for the application.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the tenants on March 1, 2022.

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on March 4, 2022, the tenants sent the landlord the Notice of Dispute Resolution Proceeding - Direct Request by registered mail. The tenants provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this mailing.

Based on the written submissions of the tenants and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on March 4, 2022 and are deemed to have been received by the landlord on March 9, 2022, 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 and a pet damage 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 landlord and the tenants on March 21, 2019, indicating a monthly rent of \$1,500.00, a security deposit of \$750.00, and a pet damage deposit of \$750.00, for a tenancy commencing on April 1, 2019
- A copy of a text message from the tenants to the landlord providing the forwarding address for the return of the deposits, to which the landlord replied on or before December 31, 2021
- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form which indicates that the forwarding address was sent to the landlord by text message at 9:15 am on December 31, 2021
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposits paid by the tenants, an authorized deduction of \$80.00, and indicating the tenancy ended on December 31, 2021

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 \$750.00 and a pet damage deposit in the amount of \$750.00, as per the tenancy agreement and the pet damage deposit receipt.

I accept the following declarations made by the tenants on the Tenant's Direct Request Worksheet:

- There are no outstanding Monetary Orders against the tenant for this tenancy
- The tenants have not extinguished their right to the deposits in accordance with sections 24(1) and 36(1) of the *Act*

I note that the tenants are requesting monetary compensation for double the full security deposit of \$750.00. However, on the Tenant's Direct Request Worksheet, the tenants have indicated they authorized the landlord to deduct \$80.00 from the security deposit.

I find I am not able to confirm the precise amount of the security deposit owing and for this reason, I will only proceed with the portion of the tenants' claim requesting the pet damage deposit.

I accept the tenants' statement on the Tenant's Direct Request Worksheet that the tenancy ended on December 31, 2021.

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 landlord by text message, which is not a method of service permitted under section 88 of the *Act*. However, I am satisfied that the landlord received the tenants' forwarding address as the landlord replied to the tenants' text message on or before December 31, 2021.

For this reason, and in accordance with section 71(2)(c) of the *Act*, I find that the landlord has been served with the forwarding address on December 31, 2021.

I accept the evidence before me that the landlord has failed to return the pet damage deposit to the tenants and has not filed an Application for Dispute Resolution requesting to retain the pet damage deposit by January 15, 2022, within the fifteen days granted under section 38(1) of the *Act*.

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

Therefore, I find that the tenants are entitled to a monetary award in the amount of \$1,500.00, the amount claimed by the tenants for double the pet damage deposit.

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

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the tenants a Monetary Order in the amount of \$1,600.00 for the return of double the pet damage 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 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.

I dismiss the tenants' application for a Monetary Order for the return of the security deposit with leave to reapply.

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: April 01, 2022

Residential Tenancy Branch