



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

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

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

The landlord did not attend this hearing, although I waited until 3:31 p.m. in order to enable him to connect with this teleconference hearing scheduled for 3:00 p.m. The male tenant (the tenant) attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The tenant testified that his wife sent the landlord a copy of the tenants' dispute resolution hearing package by registered mail on May 9, 2012. Although he had the Canada Post Tracking Number for the delivery of the tenants' written package, he said that his wife had the Tracking Number and Customer Receipt for the registered mailing of the dispute resolution hearing package. To be certain that the landlord had been served, I requested that the tenant fax a copy of the Canada Post Tracking Number and Customer Receipt to the Residential Tenancy Branch (RTB) by 11:45 a.m. on June 7, 2012. Early on the morning of June 7, 2012, the RTB received the tenant's faxed copy of the Canada Post Tracking Number and Customer Receipt. Based on the tenant's oral and written evidence, I am satisfied that the tenants served the landlord a copy of the tenants' dispute resolution hearing package, including the notice for this hearing, in accordance with the *Act*. I am also satisfied that the tenants served their written evidence package to the landlord in accordance with the *Act*.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for the return of their security deposit? Are the tenants entitled to a monetary award equivalent to the amount of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This one-year fixed term tenancy for the lower suite in a two unit rental property commenced on July 15, 2009. At the expiration of each successive fixed term, the parties entered into new one-year fixed term tenancy agreements. The most recent of these covered the period from July 15, 2011 and was scheduled to expire on July 14, 2012. Monthly rent by the end of this tenancy was set at \$1,017.00, payable in advance on the first of each month. The tenant testified that the landlord continues to hold the tenants' \$500.00 security deposit paid on July 1, 2009.

The tenant testified that this tenancy ended on the basis of a mutual end to tenancy agreement signed by both parties on or about February 7, 2012, after there was a serious fire in the rental property on February 1, 2012. By the agreement of the parties, this tenancy ended on February 29, 2012. After the fire, the tenants could not live in the rental unit as repairs and restoration had to be undertaken before this unit and the one above it could be occupied. As a result of the fire, the parties agreed that the tenants would not pay rent for February 2012.

The tenants applied for a \$1,000.00 monetary Order plus the recovery of their \$50.00 filing fee for their application. They requested the return of double their security deposit as a result of the landlord's alleged failure to either return their security deposit within 15 days of their provision of their forwarding address to the landlord or to apply for dispute resolution to keep their security deposit. The tenants entered written evidence regarding the tenants' provision of their temporary mailing address to the landlord by way of a February 21, 2012 email. The tenant maintained that the landlord received this email. By mid-March 2012, the female landlord, who had acted as the contact person for the landlords for this tenancy, was questioning whether the landlord had obtained the tenants' forwarding address in writing as required under the *Act*. Once the tenants sent the landlord a specific request to return their security deposit, the female landlord alleged that the landlord did not have their forwarding address in writing, but only a temporary address that may or may not have been correct.

Although the tenant did not enter into oral or written evidence a copy of the letter they sent to the landlord(s) confirming their forwarding address, the tenant testified that they did send the landlord the requested letter containing their forwarding address shortly before the landlord submitted his own application for dispute resolution (RTB File # 791240). The tenant did not know the date when the tenants mailed their forwarding address in writing to the landlord. He testified that within 15 days the landlord applied for a monetary award against the tenants.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, the evidence is that the tenants provided their temporary mailing address to the female landlord by way of a February 21, 2012 email. Although the tenants did not specifically request the return of their security deposit in that email, the tenants entered into undisputed written evidence the following February 21, 2012 email response from the female landlord who signed the residential tenancy agreement and acted as the landlord's agent throughout this tenancy.

Thank you – if you get anything I will forward to this address...

Based on this email response sent 10 minutes after the tenants' email containing their temporary address, I find that there is strong and undisputed evidence that the landlord did receive the tenants' forwarding address.

In subsequent emails entered into written evidence by the tenants, the female landlord quickly responded to the tenants' specific request for the return of their security deposit. In a series of emails, the female landlord advised the tenants that the landlord would not be returning their security deposit because of damage that she claimed had occurred during their tenancy, prior to the February 1, 2012 fire. In one of these emails, the female landlord provided the following response in part:

...I do not have a forwarding address, and it really is upsetting that you have waited this long to ask for the damage deposit-...As legislation states we require a forwarding address – you stated in a previous email a temporary address for mail be forwarded- again not up to the landlord and in that email stated nothing regarding a damage deposit...

Based on this undisputed evidence, the female landlord confirmed that she had received the tenants' temporary address in the February 21, 2012 email from the

tenants. I find that she mistakenly believed that the legislation required the tenants to make a specific request for the return of their security deposit **and** provide their forwarding address in writing to the landlord. Section 38 of the *Act* does not require the tenants to make a specific request to return their security deposit in order to qualify for a monetary award under section 38(6) of the *Act*. Rather, section 38 of the *Act* requires a landlord to either apply for dispute resolution for authorization to retain the tenants' security deposit or return the security deposit in full within 15 days of the end of the tenancy or receipt of the tenants' forwarding address in writing.

Under these circumstances, I find that there is repeated undisputed evidence that the landlord did receive the tenants' forwarding address on February 21, 2012. I find that there is no meaningful distinction between the tenants' "temporary address" and their "forwarding address" for the purposes of section 38 of the *Act*. There is clear and undisputed evidence that the landlord had the tenants' correct forwarding address but chose to arbitrarily and without authorization retain it as a means of offsetting the landlord's claim that he was entitled to a monetary award for damage to the rental premises. Although the landlord submitted a separate application for a monetary award for damage and loss arising out of this tenancy under RTB File # 791240, he did not attend the scheduled hearing for his application and his application for a monetary award has been dismissed.

I find that the landlord has not complied with section 38(1)(c) and (d) of the *Act*, and, as a result, the tenants are entitled to a monetary award pursuant to section 38(6)(b) of the *Act*, equivalent to double their security deposit. No interest is payable over this period.

In the event that I am wrong on my finding that the landlord received notice on February 21, 2012 of the tenants' forwarding address, I also find that there is undisputed evidence that the landlord's April 11, 2012 application for a monetary award for damage and loss arising out of this tenancy is not an application for authorization to retain any portion of the tenants' security deposit. The landlord correctly served the tenants' notice of his application for the landlord's monetary award at the same address identified by the tenants' in their February 21, 2012 email and consistently used by the tenants since February 21, 2012. By the time of this hearing, the landlord had still not applied for authorization to retain the tenants' security deposit. In the event that I am incorrect on my finding that the tenants' February 21, 2012 notification was issued in compliance with section 38(1)(b) of the *Act*, I find that the landlord's failure to take action under section 38(1)(c) or (d) of the *Act* within 15 days of receiving the tenants' letter containing their forwarding address also entitles the tenants to a monetary award pursuant to section 38(6)(b) of the *Act*, equivalent to double their security deposit.

Having been successful in this application, I find further that the tenants are entitled recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$1,050.00, which enables the tenants to recover double their security deposit and their filing fee from the landlord.

The tenants are provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: June 07, 2012

Residential Tenancy Branch