



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 their pet damage and security deposits 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 11:12 a.m. in order to enable her to connect with this teleconference hearing scheduled for 11:00 a.m. Both tenants attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenants testified that they sent the landlord a copy of their dispute resolution hearing package by registered mail to the landlord on October 10, 2013. The tenants entered into written evidence of the Canada Post Tracking Number and the returned envelope containing their dispute resolution hearing package that was returned to them as unclaimed by Canada Post. In accordance with sections 89(1) and 90 of the *Act*, I find that the landlord was deemed served with the tenants' dispute resolution hearing package including notification of the tenants' application for dispute resolution and the notice of this hearing on October 15, 2013, the fifth day after its registered mailing.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for the return of a portion of their deposits?
Are the tenants entitled to a monetary award equivalent to the amount of their deposits 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 their filing fee from the landlord?

Background and Evidence

The male tenant (the tenant) testified that the tenants commenced this periodic tenancy on or about June 1, 2013. Monthly rent was set at \$900.00, payable in advance on the first of each month. The tenants testified that they paid a \$450.00 pet damage deposit

and a \$450.00 security deposit on or about May 31, 2013. They testified that the landlord has not returned any portion of their deposits.

The tenant testified that the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on their door on August 3, 2013. They said that the landlord attended their premises on August 13, 2013, accompanied by police, to take possession of their rental unit. The tenants and the landlord participated in a joint move-out condition inspection on August 13, 2013. The tenants entered into written evidence a copy of the document they handed to the landlord during their joint move-out condition inspection containing their forwarding address for the purposes of obtaining a return of their deposits.

The tenant testified that the landlord has not filed for dispute resolution to obtain permission to keep any portion of their deposits. He said that the tenants have not given the landlord their written permission to keep any portion of their deposits and have not waived their right to obtain a monetary award resulting from the landlord's failure to return their deposits within 15 days of August 13, 2013. The tenants applied for a monetary award of \$900.00 to obtain a return of their deposits.

The tenants testified that they did not pay any rent to the landlord for the period from August 1 until August 13, 2013, when this tenancy ended.

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 deposits or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposits. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposits, and the landlord must return the deposits to the tenant(s) plus applicable interest and must pay the tenant(s) a monetary award equivalent to the original value of the deposits (section 38(6) of the *Act*). With respect to the return of the deposits, the triggering event is the latter of the end of the tenancy or the tenants' provision of their forwarding address in writing. 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, I find that the 15 day timeframe for returning the deposits or applying for authorization to retain the deposits began on August 13, 2013. Based on the undisputed sworn testimony and written evidence of the tenants, I find that the landlord has not returned any portion of the tenants' deposits, nor has she applied for dispute resolution within 15 days of August 13, 2013. The tenants gave sworn testimony that

they have not given the landlord their written authorization to retain any portion of the deposits. The tenants are therefore entitled to a monetary order amounting to double their deposits with interest calculated on the original amount only. No interest is payable over this period.

Section 72(2)(a) of the *Act* reads in part as follows:

72 (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other,...the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord,...

Based on the tenants' sworn testimony, I find that the tenants failed to pay rent from August 1 until August 13, 2013, the day their tenancy ended. The tenants gave sworn testimony that the landlord acted on the 10 Day Notice and enforced their eviction without having obtained or served them with an Order of Possession. Under these circumstances, I find that there is sworn testimony from the tenants that they have not paid rent in the amount of \$377.42 (i.e., $\$900.00 \times 13/31 = \377.42) for the first 13 days of August 2013. Pursuant to section 72(2)(a) of the *Act*, I deduct the tenants' monetary award by \$377.42 for undisputed rent that remains owed to the landlord for the last 13 days of their tenancy.

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

Conclusion

I issue a monetary Order in the tenants' favour under the following terms, which allows the tenants an award of double their deposits and the recovery of their filing fee, less the amount of rent that remains owing:

Item	Amount
Return of Double the Pet Damage and Security Deposits as per section 38 of the Act ($\$450.00 + \450.00) $\times 2 = \$1,800.00$	\$1,800.00
Less Rent Owing from August 2013	-377.42
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,472.58

The tenants are provided with these Orders in the above terms and the landlord must be served with this Order 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: January 24, 2014

Residential Tenancy Branch

