



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Grand Elephant Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenants' application pursuant to section 38 of the *Residential Tenancy Act* (the *Act*) for authorization to obtain a return of their security deposit. The landlord did not attend this hearing, although I waited until 10:44 a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 10:30 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 a copy of their dispute resolution hearing package to the address where the landlord was conducting his business by registered mail on October 26, 2013. They said that the landlord had not provided them with any other mailing address on their Residential Tenancy Agreement (the Agreement). They provided sworn testimony and written evidence of the Canada Post Tracking Number, Customer Receipt and hearing package returned by Canada Post as unclaimed to demonstrate their service of this package to the landlord. In accordance with sections 89(1) and 90 of the *Act*, I find that the landlord was deemed served with the tenants' hearing package on October 31, 2013, the fifth day after its registered mailing.

At the commencement of this hearing, the tenants clarified the dispute address, noting that their tenancy started at one address in this rental building and ended at the address cited above, where they had moved during the course of their tenancy. The tenants testified that the suite address was actually Suite 2 instead of Suite 12, as was identified on their application for dispute resolution. Since there are only three rental units in this building owned by the landlord and the landlord was clearly aware of which suite the tenants were occupying at the end of this tenancy, I agreed to the tenants' request to make this minor modification to their application.

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

deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Background and Evidence

On June 17, 2013, the tenants signed a three-month tenancy Agreement for one rental unit in this three unit rental building. The landlord signed this Agreement on June 20, 2013. The tenants testified that their monthly rent was set at \$800.00, payable on the first of each month. They paid a \$400.00 security deposit on June 14, 2013. After the tenants raised concerns about their original rental building, the parties agreed to the tenants' move to a basement unit (Suite 2) in the other portion of this rental building. The tenants confirmed that they signed a second three-month fixed term tenancy agreement that was to cover the period from October 1, 2013 until December 31, 2013.

On September 20, 2013, the tenants testified that they handed the landlord a notice to end their tenancy by September 29, 2013. They entered into written evidence a copy of that notice to end tenancy. They maintained that they took this action because the landlord had not attended to their request to repair Suite 2 in this building such that they could have secure possession of the rental unit. The tenants testified that they vacated the rental unit on September 29, 2013, at which time they handed the landlord their forwarding address in writing for the purposes of obtaining a return of their security deposit.

The tenants applied for a monetary award of \$400.00, the amount of their security deposit. They maintained that the landlord has not returned any portion of that deposit. Both tenants testified that they have not authorized the landlord in writing to retain any portion of their security deposit. There is no application from the landlord before me.

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 security 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. In this case, the landlord had 15 days after September 29, 2013 to take one of the actions outlined above. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security 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.” As there is no evidence that the tenants have given the landlord written authorization at the end of their tenancy to retain any portion of their security deposit, section 38(4)(a) of the *Act* does not apply to the tenants’ security deposit.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenants’ security deposit in full within the required 15 days. The tenants gave sworn oral testimony that they have not waived their rights to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord’s failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the value of their security deposit with interest calculated on the original amount only. No interest is payable.

Conclusion

I issue a monetary Order in the tenants’ favour under the following terms, which allows the tenants an award of double their security deposit:

Item	Amount
Return of Security Deposit	\$400.00
Monetary Award for Landlord’s Failure to Comply with s. 38 of the <i>Act</i>	400.00
Total Monetary Order	\$800.00

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 31, 2014

Residential Tenancy Branch

