



Dispute Resolution Services

Page: 1

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 less the amount already returned to them by the landlord 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 9:45 a.m. in order to enable him to connect with this teleconference hearing scheduled for 9:30 a.m. The 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 and written evidence packages by registered mail on March 24, 2014. They entered into written evidence copies of their Canada Post Tracking Number and Customer Receipt to confirm this registered mailing. The female tenant (the tenant) testified that Canada Post records show that this material was successfully delivered 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' dispute resolution hearing package and written evidence on March 29, 2014, the fifth day after the registered mailing of these documents.

Issues(s) to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their security deposit, less the amount already returned to them by the landlord, 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 their application from the landlord?

Background and Evidence

This two year fixed term tenancy commenced on September 1, 2011. At the expiration of the initial term, the tenancy continued for another month as a periodic tenancy. Monthly rent was set at \$1,200.00, payable in advance on the first of each month, plus heat and hydro. The tenants paid the landlord a \$600.00 security deposit on July 11,

2011. Although the landlord returned \$250.00 of this deposit to the tenants on December 23, 2013, the tenants testified that the landlord continues to retain the remaining \$350.00 of their deposit.

On August 31, 2013, the tenants gave the landlord their notice to end this tenancy by September 30, 2014. The tenant testified that the tenants physically moved on September 20, 2013, and surrendered vacant possession and their keys to the landlord on September 29, 2013, at the time of their joint move-out condition inspection. Although the landlord issued a report regarding their joint move-in condition inspection of September 1, 2011, a copy of which the tenants entered into written evidence, the tenants testified that the landlord issued no report of their joint move-out condition inspection.

The tenants' application for a monetary award of \$1,000.00 was based on the following calculations:

Item	Amount
Return of Double Security Deposit as per section 38 of the <i>Act</i> (\$600.00 x 2 = \$1,200.00)	\$1,200.00
Less Returned Portion of Security Deposit	-250.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order Requested	\$1,000.00

The tenants entered sworn testimony and written evidence that they handed the landlord their forwarding address on September 29, 2013, at the time of their joint move-out condition inspection. The tenants also entered sworn testimony and written evidence that they sent a copy of their forwarding address to the landlord by registered mail on October 17, 2013. They entered into written evidence a copy of this letter and the Canada Post Tracking Number and Customer Receipt regarding this mailing. They also entered into written evidence a copy of the record from Canada Post's Online Tracking System to demonstrate that their letter containing their forwarding address was successfully delivered to the landlord on October 22, 2013.

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 security 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. Even if I were to find that the tenants did not provide their forwarding address in writing to the landlord at the time of the joint move-out condition inspection, I would find in accordance with sections 88 and 90 of the *Act* that the landlord was deemed served with the tenants' forwarding address by registered mail on October 22, 2013, the fifth day after their registered mailing of this address to him.

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 landlords written authorization at the end of this 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 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, less the \$250.00 returned to the tenants in December 2013. No interest is payable over this period.

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

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, less the amount already returned to them, plus the recovery of their filing fee:

Item	Amount
Return of Double Security Deposit as per section 38 of the Act (\$600.00 x 2 = \$1,200.00)	\$1,200.00
Less Returned Portion of Security Deposit	-250.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order Requested	\$1,000.00

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: May 09, 2014

Residential Tenancy Branch

