Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- 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 landlords pursuant to section 72.

Both parties were represented at the May 7, 2014 hearing (the initial hearing) and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to discuss the request made by the landlords' agent for an adjournment of the May 7, 2014 hearing.

The landlords did not attend the June 13, 2014 hearing (the adjourned hearing), although I waited until 1:48 p.m. in order to enable them or their agents to connect with this teleconference hearing scheduled for 1:30 p.m. The tenants attended the adjourned hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenants provided written evidence that they sent the landlords a copy of their dispute resolution hearing package by registered mail on January 22, 2014. They entered into written evidence copies of the Canada Post Customer Receipt containing the Tracking Number for this mailing. In accordance with sections 89(1) and 90 of the *Act*, I find that the landlords were deemed served with this package including the tenants' application on January 27, 2014, the fifth day after the registered mailing.

Issues(s) to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlords' 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 landlords?

Preliminary Matters – Initial Hearing and Adjournment

At the beginning of the initial hearing, the landlords' agent testified that he was a family friend of the landlords. He said that he was called on short notice to participate in that hearing to request an adjournment of the initial hearing. He testified that the male landlord had intended to represent the landlords' interest at the initial hearing but was notified very early on the morning of the hearing to report to the hospital by 7:00 a.m., as a match had been obtained for surgery that he will be undergoing. Under the circumstances, the agent could not be briefed on the details of the landlords' position. He requested an adjournment of the initial hearing as the landlords could not have anticipated the timing of the call from the hospital on the morning of the hearing.

As outlined in my Interim Decision of May 9, 2014, I allowed the landlords' request for an adjournment as I accepted that the circumstances as described by the landlords' agent truly qualified as an unusual circumstance that could not have been anticipated by the landlords and were beyond the landlords' control. After considering Rule 6 of the Residential Tenancy Branch's (the RTB's) Rules of Procedure, I arranged for an adjournment of the hearing to June 13, 2014 at 1:30 p.m. and sent new Notices of Adjourned Hearing to all parties. In my Interim Decision, I stated the following:

> *Failure to attend the hearing at the scheduled time, with all relevant documents and/or witnesses, will result in a decision being made on the basis of any information before me and the testimony of the party in attendance at the hearing...*

Preliminary Matters – Landlords' Subsequent Written Request for an Adjournment

On June 4, 2014, the RTB received a June 3, 2014 written request for an additional adjournment of this hearing from the male landlord, the person hospitalized on May 7, 2014. The male landlord attached a copy of the June 13, 2014 Notice of Adjourned Hearing sent to him by the RTB and a copy of a May 29, 2014 letter from his doctor. This letter stated that the male landlord was currently hospitalized and under his care. The doctor's letter noted that the male landlord is seriously ill and would not be able to attend "his court appearance scheduled for June 13, 2014."

The tenants testified that they were not sent copies of the above letters from the landlords. They said that they have been waiting over a year since the end of their tenancy to obtain a return of their security deposit and that the landlords have been

delaying their efforts to obtain their deposit. They did not agree to the landlords' written request for an adjournment.

Analysis – Landlords' Subsequent Written Request for an Adjournment

Rule 6 of the RTB's Rules of Procedure establish how requests for a rescheduling and adjournment of dispute resolution proceedings are handled. Based on the tenants' undisputed sworn testimony, the landlords did not seek the tenants' written consent to adjourn the June 13, 2014 hearing of the tenants' application. The landlords supplied no written evidence that they had either attempted to obtain or obtained the tenants' written consent to their request for an adjournment.

As outlined below, Rule 6.2(b) allows a party requesting an adjournment to ask the Arbitrator for the rescheduling of the dispute resolution hearing if consent has not been obtained from the other party.

> *...the dispute resolution proceeding must commence at the scheduled time and the party requesting the adjournment can ask the Arbitrator to reschedule the dispute resolution proceeding by:*
>
> *a) submitting to the Residential Tenancy Branch, at least three (3) business days before the dispute resolution proceeding, a document requesting that the dispute resolution proceeding be rescheduled and setting out the circumstances that are beyond the party's control that will prevent him or her from attending the dispute resolution proceeding; or*
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> *b) having an agent represent him or her attend the dispute resolution proceeding to make a request to the Arbitrator to reschedule the dispute resolution proceeding and to describe the circumstances that are beyond the party's control that will prevent him or her from attending the dispute resolution proceeding...*

In considering this request for a second adjournment of this matter, once more I have applied the criteria established in Rule 6.4 of the Rules of Procedure. Whereas the landlords did have an agent represent them at the initial hearing, they did not do so for their second request for an adjournment. For that reason, the only information I have before me with respect to the landlords' second request for an adjournment are the two, three sentence letters noted above from the male landlord and the male landlord's doctor.

I first note that there are two landlords/Respondents named in the tenants' application for dispute resolution. During the landlords' two requests for adjournments, the only

information provided relates to the male landlord (HS). The landlords have known for at least two weeks that the male landlord would be unavailable to participate in the adjourned hearing of June 13, 2014. If he is incapacitated to the extent that he could not participate in even a teleconference hearing, this would not prevent the other landlord or an appointed agent from representing the landlords' interests in this matter. My review of the doctor's May 29, 2014 letter submitted by the landlords suggests that the doctor was led to believe that the June 13, 2014 hearing required a "court appearance." While the male landlord may not have been healthy enough to physically attend a court appearance, this is quite different than the scheduled teleconference hearing set for June 13, 2014 at 1:30 p.m.

Given these circumstances, I find that the landlords have known for some time that the male landlord would be unable to participate in this teleconference hearing. I find that they have failed to take adequate alternative measures to ensure that their interests were represented at this adjourned hearing. I also find that the pattern of behaviour exhibited by the landlords during the course of the hearing process is consistent with the tenants' claim that the landlords have been unreasonably delaying a resolution of the tenants' request for a return of their security deposit. The landlords have entered no written evidence that would call into question the tenants' position that the landlords have illegally withheld a return of their security deposit following the end of their tenancy in January 2013. I find that a further delay would unfairly prejudice the tenants. I find that there is no reason why the landlords could not have had someone other than the male landlord represent their interests at the June 13, 2014 hearing. For these reasons, I have refused the landlords' request for a second adjournment of this matter pursuant to Rule 6.6 of the RTB's Rules of Procedure. I proceeded to hear the tenants' application without the landlords' participation in the adjourned hearing of June 13, 2014.

Background and Evidence

The tenants gave undisputed sworn testimony and written evidence that their periodic tenancy for a one bedroom basement suite commenced on December 5, 2012. The tenants provided written evidence that they ended their tenancy on January 19, 2013, by which time they had vacated the rental unit. Monthly rent was set at $500.00, payable in advance. The tenants provided sworn testimony and written evidence that they paid a $250.00 security deposit on November 6, 2012

The tenants maintained that they paid two month's rent to the landlords and despite making repeated requests for a return of their security deposit, the landlords have not returned that deposit. The tenants entered into written evidence a copy of a January 2, 2014 registered letter, in which they identified their forwarding address and requested a

return of their security deposit from the male landlord. The tenants entered into written evidence a copy of the Canada Post Customer Receipt including the Tracking Number to confirm this registered mailing to the male landlord. Canada Post's Online Tracking System reveals that this registered mailing was successfully delivered to and signed as received by the male landlord on January 4, 2014. In accordance with sections 88 and 90 of the *Act*, I find that the male landlord was deemed served with the tenants' forwarding address in writing on January 7, 2014, the fifth day after this registered mailing.

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 in full 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 security 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 tenants have provided undisputed written evidence that the landlords were deemed served with the tenants' forwarding address in writing on January 7, 2014, long after this tenancy ended. However, the tenants were still within the one-year time period for notifying the landlords of their forwarding address. The landlords had 15 days after January 7, 2014 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 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 landlords have neither applied for dispute resolution nor returned the tenants' security deposit in full within the required 15 days after January 7, 2014. 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 landlords' failure to abide by the provisions of that section of the *Act*. In fact, their application for dispute resolution clearly stated their intent to pursue a

monetary award equivalent to double the value of their $250.00 security deposit. 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.

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 allow the tenants to obtain a return of double their security deposit plus the filing fee for their application:

Item	**Amount**
Return of Double Security Deposit as per section 38 of the Act ($250.00 x 2 = $500.00)	$500.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	**$550.00**

The tenants are provided with these Orders in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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 13, 2014

Residential Tenancy Branch