



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The tenants applied for the return of double their security deposit under the *Act*.

Tenants, H.S.J., G.W.L, and T.Y.A, attended the teleconference hearing and gave affirmed testimony. During the hearing the tenants were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application"), and documentary evidence were considered. The tenants testified that the Notice of Hearing, Application and documentary evidence were served on the landlord by registered mail on May 2, 2014. The tenants provided a registered mail receipt with tracking number in evidence and confirmed that the name and address matched the name of the landlord and the address of the landlord, the rental unit address as the landlord was residing at the rental unit and had asked them to move out of the rental unit without giving them a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice").

Documents sent by registered mail are deemed served five days after mailing pursuant to section 90 of the *Act*. The tenants stated that the registered mail was returned to them and was marked "unclaimed". I find the landlord was duly served on the fifth day after mailing, in accordance with the *Act*, as of May 7, 2014. I note that refusal or neglect on the part of the respondent to accept or receive registered mail does not constitute grounds for an Application for Review Consideration under the *Act*.

Issue to be Decided

- Are the tenants entitled to the return of double their security deposit pursuant to section 38 of the *Act*?

Background and Evidence

The tenants testified that a written fixed term tenancy agreement first began on March 1, 2012 and ended on February 28, 2013 when a second one year fixed term tenancy agreement was entered into at that time and was scheduled to end on February 28, 2014. Monthly rent in the amount of \$1,800.00 was due on the first day of each month. The tenants stated that the landlord requested and accepted a security deposit of \$1,000.00 from the tenants at the start of the tenancy, which is an amount that exceeds what is permitted under the *Act*, and will be addressed later in this Decision.

The tenants testified that prior to end of their second fixed term tenancy agreement, the landlord verbally requested for the tenants to move out of the rental unit without issuing a 2 Month Notice. The tenants stated that they complied with the landlord's verbal request and moved out of the rental unit early as directed on January 31, 2014.

The tenants stated that they sent their written forwarding address to the landlord by regular mail on March 20, 2014 and have not received any response from the landlord since and have not received any portion of their \$1,000.00 security deposit from the landlord since vacating the rental unit. A copy of the tenants' written forwarding address dated March 20, 2014 was submitted in evidence. The tenants are seeking double the return of their security deposit pursuant to section 38 of the *Act*, as a result.

Analysis

Based on the undisputed documentary evidence and the undisputed testimony of the tenants provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable under the *Act* to minimize the damage or loss.

Amount of security deposit – The maximum security deposit permitted as set out in Schedule 2(1) of the *Residential Tenancy Act Regulation* (the “Regulation”) is one half of the monthly rent. In the matter before me, the monthly rent was \$1,800.00 per month, so I find the landlord breached the Regulation by requesting and accepting a \$1,000.00 security deposit from the tenants, when the maximum security deposit should have been \$900.00. As a result, **I caution** the landlord not to request or accept a security deposit from a tenant or tenants exceeding more than one half of monthly rent in the future.

Tenants’ claim for the return of double their security deposit - I accept the undisputed testimony of the tenants that they vacated the rental unit on January 31, 2014 in response to the landlord’s verbal request for them to vacate the rental unit and that the landlord did not issue the tenants a 2 Month Notice under the *Act*. Section 38 of the *Act* applies which states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[my emphasis added]

The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an Arbitrator or the written agreement of the tenants. In the matter before me, the tenants mailed their written forwarding address to the landlord on March 20, 2014, a copy of which was submitted in evidence. Pursuant to section 90 of the *Act*, and without any evidence to prove to the contrary, I find the landlord was deemed to be served with the tenants written forwarding address five days later on March 25, 2014. As the landlord is deemed to have been served with the tenants' written forwarding address and the landlord did not have any authority under the *Act* to keep any portion of the security deposit, I find the landlord breached section 38 of the *Act* by failing to return the security deposit in full to the tenants within 15 days of receiving the forwarding address of the tenants in writing on March 25, 2014. Therefore, I find the tenants are entitled to the return of double their original security deposit of \$1,000.00 for a total of **\$2,000.00**.

The landlord has established a total monetary claim of **\$2,000.00** comprised of double the original security deposit of \$1,000.00 pursuant to section 38 of the *Act*. I grant the tenants a monetary order pursuant to section 67 of the *Act*, in the amount of **\$2,000.00**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenants' claim had merit. The landlord has breached section 38 of the *Act*.

The tenants have been granted a monetary order under section 67 in the amount of \$2,000.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlord has been cautioned not to request or accept a security deposit from a tenant or tenants exceeding more than one half of monthly rent in the future.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: August 5, 2014

Residential Tenancy Branch

