



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OPT, O

Introduction

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

- authorization to obtain a return of all or a portion of the security deposit and pet damage deposits, pursuant to section 38;
- an Order of Possession of the rental unit, pursuant to section 54; and
- other remedies, identified as compensation pursuant to sections 50 and 51 of the *Act*.

The landlords did not attend this hearing, although it lasted approximately 38 minutes. The tenant JMB ("tenant") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant confirmed that she had authority to represent the other named tenant in this application, DWS, as an agent at this hearing.

The tenant testified that the landlords were served with the tenants' Application for Dispute Resolution hearing package ("Application") on August 21, 2014, by way of registered mail. The tenant provided a Canada Post tracking number orally during the hearing, to confirm this service. The tenant stated that the package was returned to the tenants after it had been opened and resealed because the landlords refused to accept service. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were deemed served with the tenants' Application on August 26, 2014, the fifth day after its registered mailing.

During the hearing, the tenant withdrew the tenants' application for an order of possession of the rental unit, indicating that it was made in error. Accordingly, this portion of the tenants' application is withdrawn.

Issues to be Decided

Are the tenants entitled to a monetary award for the return of all or a portion of their security and pet damage deposits?

Are the tenants entitled to compensation under sections 50 and 51 of the *Act*?

Background and Evidence

The tenant testified that this tenancy began on August 24, 2011 and ended on June 30, 2014. The tenant stated that all of the tenants' possessions were removed from the rental unit by June 14, 2014. The tenant indicated that the rental unit keys were left on the landlords' property on June 30, 2014, as the landlords refused to meet with the tenants. Monthly rent in the amount of \$800.00 was payable on the first day of each month. The tenant testified that a security deposit of \$400.00 and a pet damage deposit of \$400.00 were paid by the tenants at the beginning of this tenancy. The tenant testified that the landlord continues to retain both the tenants' security and pet damage deposits in full. A written tenancy agreement was provided by the tenants with their Application.

The tenant stated that the tenants received a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated May 8, 2015 ("2 Month Notice"), around May 7, 2015. The tenant provided a copy of the 2 Month Notice with the tenants' Application. The 2 Month Notice identifies an effective move-out date of July 14, 2014. The tenant indicated that the effective date on the notice was incorrect, as rent was due on the first day of each month, so the effective date should have been the last day of the month, July 31, 2014, as per section 53 of the *Act*.

The tenant stated that she sent a letter to the landlords, pursuant to section 50(1)(a) of the *Act*, to end the tenancy earlier than the effective date on the 2 Month Notice. The tenant stated that she sent this letter on May 15, 2014 by regular mail, regarding the tenants' intention to vacate the rental unit early, by June 30, 2014. She stated that this letter acknowledged receipt of the landlords' 2 Month Notice. The tenant stated that rent of \$800.00 for each of May 2014 and June 2014 was paid to the landlords. The tenant stated that rent for July 2014 was not paid to the landlords because the tenants had already vacated the rental unit prior to July 1, 2014. The tenants seek compensation under section 50(2) of the *Act*, stating that they are entitled to a refund of June 2014 rent of \$800.00, pursuant to the landlords' 2 Month Notice.

The tenant stated that she sent a letter to the landlords on June 23, 2014, by way of registered mail. The tenant indicated that this letter provided the tenants' forwarding address, requested a return of the tenants' security and pet damage deposits, and

requested one month's free rent compensation for the 2 Month Notice. She stated that the letter was returned to the tenants indicating that the landlords refused service. The tenant provided a copy of the envelope, which included a Canada Post tracking number, with a stamp of "refused" on the front.

The tenant testified that there was no unpaid rent owing at the end of this tenancy. The tenant stated that a move-in condition inspection and report were completed on August 24, 2011 and a copy of the report was provided with the tenants' Application. The tenant confirmed that no move-out condition inspection or report was completed, despite the tenants' request, which the landlords refused. The tenant stated that the rental unit was sufficiently cleaned when the tenants vacated. The tenant confirmed that the landlords were not provided with written permission to retain any amount from the tenants' security or pet damage deposits. The tenant stated that she initially sent a text message to the landlords offering for them to retain half of each deposit, totalling \$400.00, in order to dispose of some belongings, but that the tenants ultimately paid for this disposal themselves. The tenant stated that the tenants have not been served with, nor are they aware of, any application made by the landlords to retain the tenants' security or pet damage deposits.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings around each are set out below.

Security Deposit

Section 38 of the *Act* requires the landlord to either return all of the tenant's security and pet damage deposits or file for dispute resolution for authorization to retain the deposits, within 15 days of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security and pet damage deposits. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security and pet damage deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or if an amount at the end of the tenancy remains unpaid (section 38(3)(b)).

The tenants seek the return of their security and pet damage deposits, totalling \$800.00. The tenants provided their forwarding address to the landlord in writing on June 23,

2014. The tenancy ended on June 30, 2014. The tenants did not give the landlord written permission to retain any amount from their security or pet damage deposits. Although the tenant acknowledged sending a text message to the landlords offering to allow the landlords to retain \$400.00 from both deposits, the landlords did not respond to this offer and the tenants disposed of their belongings, which was the subject of their offer. The tenants stated in their Application that they were initially only seeking a return of half their deposits of \$400.00. The tenant indicated that she offered this amount because she felt pressured by the landlords' aggressive behavior and was hoping to resolve this matter prior to the hearing. In any event, the tenants' text message to the landlords is not considered to be proper written notice or service under the *Act*. Written permission must be made by way of a notice in writing, served by one of the methods outlined in section 88 of the *Act*. The landlords did not return these deposits to the tenant or make an application for dispute resolution to claim against these deposits, within 15 days of the end of this tenancy and the tenant's provision of a written forwarding address.

The landlords continue to hold the tenants' security deposit of \$400.00 and pet damage deposit of \$400.00, totalling \$800.00. Over that period, no interest is payable on the landlords' retention of the deposits. In accordance with section 38(6)(b) of the *Act*, I find that the tenants are entitled to obtain a monetary award amounting to double the value of their security and pet damage deposits, totalling \$1,600.00.

Sections 50 and 51 Compensation

Pursuant to section 53 of the *Act*, incorrect effective dates on a 2 Month Notice can be automatically changed. The tenants were served with the 2 Month Notice around May 7, 2014 and two clear months' notice would move the effective date of the notice to the end of July, rather than July 14, 2014. Rent is also due on the first day of the month and the effective date must be the day before this rental due date. Accordingly, the effective move-out date on the 2 Month Notice is automatically corrected to July 31, 2014. The tenants were aware of the incorrect effective date, as they acknowledged this fact in their written evidence for their Application and the tenant testified that she spoke with the Residential Tenancy Branch about this matter.

Section 51 of the *Act* entitles the tenants to compensation of one month's free rent pursuant to a 2 Month Notice for Landlord's Use. In this case, the tenants provided at least 10 days' written notice to the landlords to end the tenancy early on June 30, 2014, as per section 50(1)(a) of the *Act*. As per section 50(2) of the *Act*, if the tenants paid rent before giving their notice to leave early, the landlords must refund this rent after the effective date of the tenant's notice. As the tenants paid rent for June 2014, they are

entitled to a refund of this \$800.00 amount from the landlords as per section 51 of the *Act*.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$2,400.00 against the landlords under the following terms:

Item	Amount
Return of Double Security Deposit as per section 38 of the Act (\$400.00 x 2 = \$800.00)	\$800.00
Return of Double Pet Damage Deposit as per section 38 of the Act (\$400.00 x 2 = \$800.00)	800.00
One Month's Rent Compensation under sections 50 and 51 of the <i>Act</i>	800.00
Total Monetary Order	\$2,400.00

The tenants are provided with a monetary order 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 this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenants' application for an order of possession of the rental unit is withdrawn.

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: March 27, 2015

Residential Tenancy Branch