



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPP, 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 all or a portion of their security deposit pursuant to section 38;
- an order requiring the landlord to return the tenants' personal property pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 1:15 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:00 p.m. The tenants both attended the hearing and were given a full opportunity to be heard, to present sworn testimony, and to make submissions.

Tenant KM testified that he served the landlord with the tenants' Application for Dispute Resolution by registered mail twice. He testified that, on the first service to the landlord, his Application for Dispute Resolution was returned to him as refused. Tenant KM testified that, on the second service, his Application for Dispute Resolution was not refused but was not picked up at the post office. The tenants provided Canada Post receipts and tracking numbers for both mailings. Tenant KM testified that the landlord resided in the property next door to their rental unit. Tenant KM testified that the landlord still resided in that residence. Tenant KM testified that both registered mail packages were sent to this address.

In accordance with section 89 of the *Act*, the tenants elected to serve the landlord by registered mail.

Residential Tenancy Policy Guideline No. 12, with respect to service of documents and the appropriate address for service;

... The respondent's address may be found on the tenancy agreement, in a notice of forwarding address, in any change of address document or in an Application for Dispute Resolution.

With respect to service by a tenant to a landlord specifically, the policy guideline allows several ways to obtain an address for a landlord, including by using;

- *The address of the landlord as set out in the written tenancy agreement. ...*
- *The address where the landlord resides.*

I accept the testimony of the tenants that they are confident of the landlords' residential address. The address provided in the Canada Post receipts for the tenants' registered mail is the address that the landlord provided on the residential tenancy agreement submitted by the tenants. Both tenants testified that the landlord lived near their rental unit.

Policy Guideline No. 12 also provides that,

The Legislation deems that a document not served personally, has been served a specified number of days after service:

- *if given or served by mail, on the fifth day after mailing it ...*

And that,

Deemed service means that the document is presumed to have been served unless there is clear evidence to the contrary. Deemed service applies to all types of documents not personally served.

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

In accordance with section 89 and 90 of the *Act*, I find the landlord deemed served with the tenants' application for dispute resolution on March 26, 2015. The registered mail

receipt submitted by the tenants that refers to the mailing address of the landlord on the tenancy agreement is dated March 26, 2015.

Issues to be Decided

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

Are the tenants entitled to a monetary award equivalent to the amount of their pet damage and security deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to return of their property by the landlord?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Both tenants testified that this 13 month fixed term tenancy began on January 1, 2014 and ended when they vacated the rental unit on January 31, 2015. Monthly rent was set at \$1650.00, payable on the first of each month. Tenant KM testified that both tenants paid a \$825.00 security deposit on November 15, 2014 and a \$825.00 pet deposit on January 1, 2015. The tenants submitted a copy of the residential tenancy agreement with their evidentiary materials. The tenants also included copies of paid utility bills, the condition inspection reports for move-in and move-out, a police report documenting an incident with the landlord and a copy of their notice to vacate the rental unit at the end of their tenancy.

Tenant KM testified that the landlord was provided with their forwarding address in writing on January 27, 2015 before the tenants vacated the rental unit and again on February 11, 2015 when they received no return of their security and pet deposits. Both tenants testified that they have not received a return of any portion of their security or pet deposits as of the date of this hearing. Tenant JM testified that the landlord telephoned her on January 14, 2015 asking to meet with him regarding the security and pet damage deposits. Both parties testified that they were uncomfortable meeting with the landlord in person but tenant JM advised the landlord she was willing to speak to him by telephone. Tenant JM testified that the landlord did not provide any further information by phone on that date and that, on or about January 17, 2015, the landlord telephoned Tenant JM to advise that the tenants owed the landlord \$800.00. Both tenants testified that they did not give their written authorization to allow the landlord to retain any portion of their security deposit.

The tenants submitted three letters to the landlord regarding mice in their rental unit. The first letter, dated March 27, 2014 requested landlord assistance in addressing the mice within the residence and provided three possible pest control companies that were approved by the Better Business Bureau. The second letter, dated April 16, 2014, acknowledged attempts to use traps at the request of the landlord and a failure of those traps to be effective in addressing the mouse problem. The second letter also provided a timeline for the landlord to respond before the tenants took their own steps to address the mice issue. The tenants both testified that the landlord gave little to no response to these requests. After the first letter, he asked the tenants to use traps at their own cost but indicated he would take no further steps to rid the unit of mice. Tenant KM testified that the tenants called a pest control company on their own and had the mice issue evaluated. In a third letter to the landlord, the tenants provided a copy of the work order documenting the steps taken by the company and the recommendations the company made to have the landlord rectify the rodent issue. That work order included a pest control company paid receipt in the amount of \$99.75. The tenants sought to recover this amount from the landlord.

Tenant KM testified that the landlord used a towel belonging to the tenants one day. According to the tenants, the landlord left with the towel stating he would clean and return the item. It was not returned. The tenants originally sought an order for return of their property from the landlord.

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 deposits or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposits. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposits, and the landlord must return the tenant's deposits plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the deposits (section 38(6) of the *Act*).

With respect to the return of the deposits, the triggering event is the latter of the end of the tenancy or the tenants' provision of the forwarding address. In this case, the tenants had provided their forwarding address before vacating the rental unit. Both tenants provided sworn and undisputed testimony that they vacated the rental unit on January 31, 2015. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a 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." In this case, both tenants

testified that they did not agree in writing with the landlord to retain any portion of their pet damage or security deposits.

I find that the landlord has not returned the tenants' deposits in full within 15 days of receipt of the tenants' vacating the rental unit. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenants' deposits. As of the date of this hearing, the landlord has not applied to retain the tenants' deposits or returned them.

The following provisions of Policy Guideline 17 of the Residential Tenancy Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

In accordance with section 38 of the *Act*, I find that the tenants are entitled to a monetary order amounting to double their security and pet damage deposits with interest calculated on the original amount only. No interest is payable over this period for either deposit.

The tenants also sought reimbursement for a pest control services invoice that they paid to rid their rental unit of mice. The tenants submitted a copy of this invoice as well as correspondence sent to the landlord requesting action regarding a mice problem in the rental unit. Pursuant to section 67 of the *Act*, in seeking a monetary award from damage or loss, the tenants are required to prove the existence of loss that stemmed from a violation of their agreement or a contravention of the *Act* by the landlord. The tenants have shown through their documentary evidence that they attempted to request the landlord's assistance in addressing their pest problem. Addressing pest issues within

the residential premises is an obligation of the landlord under the section 32(1) of the *Act* requiring a landlord to provide a residential property in a state of repair that complies with health, safety and housing standards under the law and having regard to the character of the rental unit, make it suitable for occupation by the tenant. The tenants took all required steps in attempting to allow the landlord to address their pest problem.

Based on the tenant's undisputed testimony and their documentary materials, I find the landlord did not meet his obligations under the *Act* regarding the mice infestation in the rental unit. The tenants must also provide evidence to verify the actual monetary amount of their loss. Based on the undisputed testimony of both tenants and their supporting documentary evidence, I find that the tenants have shown their loss in the amount of \$99.75 (pest control company invoice provided). Therefore, I find the tenants are entitled to recover the amount spent on pest services.

The tenants provided little to no evidence with respect to the towel that they claim the landlord has in his possession. Based on a lack of evidence and some indication in testimony that the tenants would not proceed with respect to this portion of their application, I dismiss the application to have the landlord return the tenants' property.

As the tenants have been successful in their application, I find that the tenants are also entitled to recover their filing fee from the landlord.

Conclusion

I dismiss the tenants' application for return of their property, a towel.

I issue a monetary Order in the tenants' favour under the following terms which allows the tenants to recover their cost for pest services at the rental unit; their original security and pet damage deposits plus a monetary award equivalent to the value of the pet and security deposits as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*:

Item	Amount
Return of Security Deposit	\$850.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i> with respect to Tenants' security deposit	850.00

Return of Pet Deposit	850.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i> with respect to Tenants' pet deposit	850.00
Pest Services Invoice	99.75
Filing fee for this application	50.00
Total Monetary Order	\$3549.75

The tenants are provided with these Orders in the above terms and the landlord(s) must be served with a copy of these Orders 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: April 21, 2015

Residential Tenancy Branch

