



Dispute Resolution Services

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 all or a portion of their security deposit pursuant to section 38 and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Tenant ML (the tenant) testified that he would be representing the interests of his co-tenant, Tenant SL.

Preliminary Issue: Service

Tenant ML testified that, on approximately March 25, 2015, he realized he had not served the landlord with his Application for Dispute Resolution package. The landlord confirmed that the tenant handed him that package on March 25, 2015.

The tenants had filed their documents at the Residential Tenancy Branch on November 7, 2014. The letter received with his application package indicated,

Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.

The legislation indicates that, if an arbitrator finds that a party has unreasonably delayed the service of their evidence, an arbitrator may refuse to consider that evidence. Pursuant to section 71(2)(c), an arbitrator may also find and order that a document has been sufficiently served for the purposes of the *Act*.

The legislation provides that to start proceedings, "a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days

of making it, or within a different period specified by the director.” Within the Dispute Resolution Rules of Procedure, Rule No. 3 states that evidence must be served to the other party as soon as reasonably possible. Standards for the service of documents to be referred to in a dispute resolution hearing are essential to a fair hearing. Service within a reasonable time of making an application allows the respondent an opportunity to know the nature of the application and have an opportunity to respond.

In this case, the landlord testified that he received the tenants’ application and documents seven days prior to this hearing. While this application has been served substantially late, the landlord was aware of the hearing and submitted materials with respect to the application. The landlord argued that he submitted his materials without knowing the entirety and particulars of the tenants’ application. The landlord submitted that he was unable to respond entirely to the tenants’ claims within their application given the short time frame to respond.

In their application, the tenants sought a monetary award for return of their security deposits. The tenant provided no further documentary evidence beyond the information provided on the application itself. The landlord had a legislated obligation to take action with respect to the security deposit at the end of this tenancy. The landlord has a limited time in which to either return a security deposit or apply to retain that deposit.

The tenants’ testimony that a forwarding address was provided to the landlord prior to the end of tenancy was not disputed by the landlord nor was the date that the tenants vacated the rental unit. As of the date the tenants vacated the rental unit, the landlord was obligated to take steps with respect to their security deposit. The tenants’ application was simple in that they sought to review the landlord’s action or lack thereof with respect to their security deposit. While the tenants’ documents were served late, the landlord had seven days to review and provide further response on a basic application. In all the circumstances, I find that the landlord was sufficiently served with the documents for hearing. I find that principles of natural justice would not be impeded, and the landlord will not be prejudiced, by allowing this hearing to proceed.

The landlord provided undisputed testimony that his evidence package was served to both tenants on March 19, 2015. The tenants confirmed receipt of this package. Pursuant to section 88 of the *Act*, I find the tenants duly served with the landlord’s evidence package on March 19, 2015.

Issues to be Decided

Are the tenants entitled to a monetary award for the return of their security deposits?

Are the tenants entitled to a monetary award equivalent to the amount of their security deposit 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 this application from the landlord?

Background and Evidence

This tenancy began on April 1, 2010. At that time, the tenancy was fixed for a one year term. Since that date, the tenancy has been regularly renewed. The rental amount was \$1700.00, payable on the first of each month. The landlord testified that he continues to hold a security deposit of \$850.00 paid by the tenants on April 1, 2010.

Both parties testified that a walk through was done at the beginning of the tenancy but no formal report was created. Both parties testified that no condition inspection report was prepared at the end of the tenancy on August 23, 2014. The landlord testified, that the security deposit was withheld from the tenants as he was required to repair two windows in the rental unit, clean up the basement and the yard and pay for landscaping as a result of the tenants' neglect of the yard at the rental property. The landlord testified that the residential tenancy agreement, which he submitted in evidence, provided that the tenants were responsible for yard work during the tenancy. The landlord submitted invoices for landscaping in the amount of \$4500.00, a rubbish removal receipt in the amount of \$180.00 and a window and glass company receipt in the amount of \$146.00. The landlord did not apply to the Residential Tenancy Branch to retain the tenants' security deposit nor did he communicate in writing his intent to retain the deposit.

The landlord testified that he was unable to re-rent the property after the tenants vacated the property. He testified that he had over 10 showings over the course of September 2014, but that the prospective tenants found the yard and basement very unclean. The landlord submitted photographs of an overgrown yard. He testified that he was able to rent the property on October 1, 2014.

The landlord submitted a copy of the tenants' notice to end tenancy for August 31, 2014 in his documentary evidence. The letter was dated July 31, 2014 and included the tenants' forwarding address.

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 tenants' forwarding address in writing, to

either return the deposit 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 deposit, and the landlord must return the tenants' security deposit plus applicable interest and must pay the tenants 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 tenants' provision of the forwarding address. In this case, the tenants provided their forwarding address on July 31, 2014 and vacated the rental unit on August 31, 2014.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage 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." Tenant ML gave undisputed sworn testimony that the landlord has not obtained his or his co-tenant's written authorization at the end of the tenancy to retain any portion of their security deposit.

In this case, I find that the landlord has not returned the tenants' security deposit 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 tenant's security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's 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 therefore entitled to a monetary order amounting to double the original security deposit with interest calculated on the original amount only. No interest is payable over this period. As the tenants have been successful in his application, I find that the tenants are also entitled to recover the filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour under the following terms which allows the tenants to recover their original security deposit plus a monetary award equivalent to the value of their security deposit as a result of the landlord's 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>	850.00
Recovery of Filing Fee	50.00
Total Monetary Order	\$1750.00

The tenants are provided with this Order in the above terms and the landlord(s) must be served with a copy of 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: April 07, 2015

Residential Tenancy Branch