



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KGHM INTERNATIONAL LTD
and [tenant name suppressed to protect privacy]

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 landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Preliminary Issues

The landlord who attended this hearing (the landlord) testified that the other person identified as a landlord/Respondent in the tenants' application, the landlord's daughter, did not actually own the rental property and should not have been listed as a respondent or landlord on the tenants' application. The tenants' legal counsel (the tenants' counsel), who represented both tenants in this hearing, noted that the landlord's daughter was the only person dealing directly with the tenants during the portion of the tenancy after the landlord purchased this rental property in early May 2014.

I advised the parties that the written evidence supplied by the tenants and the sworn testimony of the tenants' counsel convinced me that the landlord's daughter had acted as the landlord's agent during this tenancy, and met the definition of a landlord as established in the following portion of section 1 of the *Act*:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,...*
- (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;...*

The tenants' counsel testified that dispute resolution hearing packages were sent to both landlords by registered mail. He provided the Canada Post Tracking Number to confirm the registered mailing to the landlord. Although the package sent to the landlord was returned as unclaimed, the package sent to the landlord's daughter was received. The landlord testified that this package including a copy of the tenants' written evidence was received by the landlord and her daughter during the last week of May 2015, and that she had reviewed the material provided by the tenants. In accordance with sections 88 and 89(1) of the *Act*, I find that the landlords were duly served with copies of the tenants' dispute resolution hearing package including notice of the tenants' application, written evidence and notice of this hearing.

The landlords did not enter any written evidence for this hearing.

Issues(s) to be Decided

What is the correct amount of the security deposit for this tenancy for the purposes of the *Act*? 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 this application from the landlords?

Background and Evidence

On September 25, 2013, the tenants signed a one-year fixed term Residential Tenancy Agreement (the Agreement) with the previous owners of this rental property. The tenancy was to cover the period from November 15, 2013 until November 15, 2014. Monthly rent for this furnished rental unit was set at \$3,400.00, payable in advance on the first of each month, plus 2/3 of the utility cost. According to the terms of the Agreement, the tenants paid a \$1,700.00 security deposit and a \$1,700.00 furniture deposit for this furnished rental unit before the tenants occupied the rental unit.

After the current landlord purchased the property in early May 2014, the parties entered into a verbal mutual agreement to end this tenancy on May 28, 2014. On May 29, 2014, one of the tenants' representatives sent the landlord(s) an email to confirm that both parties had agreed to end this tenancy before the scheduled end of the fixed term. The parties agreed that this tenancy ended on July 6, 2014, by which time the rental unit was transferred to the landlords' possession.

The tenants applied for a monetary award of \$3,400.00, seeking a return of the security and furniture deposits. Their written evidence provided to the landlords with their application for dispute resolution also advised that they were seeking a return of double these deposits, totalling \$6,800.00, due to the landlords' failure to comply with the provisions of the Act. The tenants also applied to recover their filing fee from the landlords.

The tenants' counsel testified that the mailing address for the tenants has remained the same throughout this tenancy as the corporate tenant has looked after the details of this tenancy for the tenants. The tenants' counsel gave sworn testimony supported by written evidence in the form of an October 15, 2014 letter, that the tenants provided the landlords with a forwarding address in writing where the landlords could return the security and furniture deposits. This letter was also cc'd to the landlord's daughter's email address on October 15, 2014. The tenants' counsel noted that the landlord responded to the October 15 request to return the tenants' deposits on October 17, 2014, as follows:

hi there

unfourtunately, there were a lot of damage specially the furniture which we had to through them out. Therefore, we are not able to return any money to your client.

Regards

M (the landlord)

(as in original)

The above email was sent from the landlord's daughter's email account to an administrative staff member of the corporate tenant, but from an iPhone. The landlord remarked initially that she was not aware of sending this email. Later during the hearing, she confirmed that the email was sent in response to the tenants' request for the return of the security and furniture deposits. The landlord testified that there was damage to the furniture, which had to be discarded at the end of this tenancy. The landlord confirmed that she had not made any application to either retain the deposits or to obtain a monetary award for damage arising out of this tenancy.

At the hearing, the landlord confirmed that the previous landlord forwarded both of these deposits to the landlord as part of the closing arrangements for the transfer of

ownership of this rental property. She also confirmed that she still holds both of these deposits.

Analysis

I first note that Residential Tenancy Branch Policy Guideline #29 establishes that a furniture deposit is considered to be a security deposit as defined in the *Act*.

As a result of the definition of a security deposit in the Residential Tenancy Act and the regulations, the following payments by a tenant, or monies received by a landlord, irrespective of any agreement between a landlord or a tenant would be, or form part of, a security deposit:...

- *A furniture deposit in respect of furnished premises.*

The Residential Tenancy Act requires that a security deposit must not exceed one-half of one month's rent. If one or more of the above payments, together with other monies paid, exceeds one-half of one month's rent then the remedies afforded by the Act would be available to a tenant.

In this case, the imposition of a furniture deposit of \$1,700.00 in addition to the regular security deposit of \$1,700.00 by the previous landlord exceeded the amount that could legally be charged for a security deposit under the *Act*. Based on the monthly rent charged for this rental unit, the maximum the landlord could charge for a security deposit (including the furniture deposit) for this tenancy was \$1,700.00. The *Act* establishes that a purchaser of a rental property assumes all of the rights and responsibilities of the former landlord once the purchaser assumes ownership of the rental property. Thus, the current landlord is responsible for the obligations created by section 38 of the *Act* with respect to the tenants' security deposit, including the furniture deposit.

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 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, I find that there is compelling evidence that the landlord had the tenants' forwarding address by October 17, 2014. The tenants' written evidence and the landlord's sworn testimony confirmed that the landlords had the tenants' forwarding address by at least October 17, 2014. This gave the landlords 15 days following October 17, 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 this security deposit (including the furniture deposit), section 38(4)(a) of the *Act* does not apply to the tenant's security deposit. I also note that section 38(5) of the *Act* established that the landlords' ability to claim against these deposits pursuant to section 38(4)(a) of the *Act* was already extinguished under section 24(2) of the *Act* since the landlord confirmed that no move-in condition occurred nor was any report of the move-in condition created.

The following provisions of RTB Policy Guideline 17 are also 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;...*
- *whether or not the landlord may have a valid monetary claim.*

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. The tenants' counsel gave sworn oral testimony that the tenants have not waived their rights to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. 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, which I find also includes the furniture deposit for this tenancy. Section 38(6) of the *Act* reads as follows:

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

- (a) may not make a claim against the security deposit..., and
- (b) must pay the tenant double the amount of the security deposit,...

No interest is payable over this period. 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 from the landlord(s).

Conclusion

I issue a monetary Order in the tenants' favour under the following terms, which allows the tenants to recover double their security deposit (including the furniture deposit) plus the recovery of their filing fee:

Item	Amount
Return of Double Security Deposit (including the Furniture Deposit) as per section 38 of the Act (\$1,700.00 + \$1,700.00 = \$3,400.00) x 2 = \$6,800.00	\$6,800.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$6,850.00

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 this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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 24, 2015

Residential Tenancy Branch

