



Dispute Resolution Services

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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 the security deposit pursuant to section 38 and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants submitted evidence that the landlord was served by registered mail on December 19, 2014. The evidence included a Canada Post receipt and a tracking number. The tenants provided evidence indicating that the package had been returned "unclaimed". Tenant LB testified that the landlord had lived above her and her co-tenant in the rental unit and continued to do so. Tenant LB provided sworn undisputed testimony that she had driven by and observed the landlord at this same address. She testified that this address was provided on the residential tenancy agreement and that she was certain the landlord continued to reside at the address where the registered mail was sent. I find that the tenants have provided sufficient evidence in their documentation and in sworn testimony to show that the landlord was duly served with the tenant's Application for Dispute Resolution hearing package on December 24, 2014 (5 days after its registered mailing) in accordance with Residential Tenancy Policy Guideline No. 12 as set out below.

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.

The landlord did not attend this hearing, although I waited until 1:53 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 p.m. Tenant LB and Tenant AF attended the hearing and both were given a full opportunity to be heard, to present sworn testimony, and to make submissions in support of their application for return of their security deposit.

With respect to the landlord's failure to attend this hearing, Rule 10.1 of the Rules of Procedure provides as follows:

The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

(emphasis added)

Given my finding that the landlord was sufficiently served with notice of this hearing, the dispute resolution hearing proceeded in the absence of the landlord.

Issue(s) to be Decided

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

Are the tenants entitled to a monetary award equivalent to the value of his 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

Tenant LB testified that this tenancy began on February 15, 2014 as a 6 month fixed term tenancy. She and her co-tenant, Tenant AF continued to reside in the rental unit until July 14, 2014, when they both vacated the rental unit. Tenant LB testified that she provided notice to end the tenancy in June 2014. The rental amount had been \$1100.00 payable on the fifteenth of each month. Tenant LB testified she and her co-tenant originally paid a \$500.00 security deposit and a 300.00 pet damage deposit that the landlord continues to hold. She also testified that she and her co-tenant paid rent on June 15, 2014 for the period up to July 14, 2014.

Tenant LB testified that no condition inspection report was created at the beginning of this tenancy. She testified that, at the beginning of the tenancy, the landlord stated she was "not concerned about it". Tenant LB testified that no condition inspection report was created or provided to the tenants at the end of tenancy. She testified that she waited on July 14, 2014, the day she vacated the residence, to review the condition of the rental unit with the landlord but that the landlord stated she had seen the unit recently and it was fine. Tenant LB testified that she provided her (and co-tenants') forwarding address to the landlord verbally on the date she vacated the residence.

The tenants submitted an email sent by the landlord dated July 20, 2014. That letter stated in part that,

... I have had time to go through the suite and have it cleaned and this is what we found ... We do feel that the ... mentioned items are beyond "normal use". ... We will be retaining the "pet deposit" of \$300, and we will try our best to make other necessary repairs for an additional \$300. Also as mentioned, the utilities are due from June 15th-July 15th and your average is approximately \$100. From your \$800 deposit, we will be keeping \$700.

The tenants also submitted their email response to this landlord correspondence. Their response, dated July 22, 2014 refers to the rules and regulations of the Residential Tenancy Branch and formally requested the return of the security and pet deposit. As well, the email provides the tenants' forwarding address. In that same letter, Tenant LB indicated to the landlord that she may retain \$100.00 of the security deposit towards utilities and any cleaning costs. The tenants provided no testimony or evidence that they had provided the landlord with their forwarding address in any form other than by email.

Tenant LB and Tenant AF testified that they have not received a return of their \$500.00 security deposit and their \$300.00 pet damage deposit (totalling \$800.00) and did not give written authorization to allow the landlord to retain any portion of the security deposit.

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 security and pet damage deposits or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain all or a portion of those 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 security and pet damage deposit 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 security and pet damage deposits, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. 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." The tenants both gave undisputed sworn testimony that the landlord had not obtained their written

authorization at the end of the tenancy to retain any portion of the tenants' security or pet damage deposits.

In this case, I find that the landlord has not returned the tenants' security or pet damage deposit in full within 15 days of receipt of the tenants' vacating the residence on July 14, 2014 and providing their forwarding address on July 22, 2015. While the tenants provided their forwarding address in the form of an email, I note that the landlord also communicated with the tenants in this form and there is documentary evidence indicating her receipt of this forwarding address. Further, there is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenants' security or pet damage 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 security and pet damage deposits with any interest calculated from the original payment date of February 1, 2014. There is no interest payable for this period of time. As the tenants have been successful in his application, I find that the tenants are also entitled to recover their 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 security and pet damage deposits plus a monetary award equivalent to the value of the security and pet damage 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	\$500.00
Return of Pet Damage Deposit	300.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i> re security	500.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i> re pet damage	300.00
Filing fee for this Application	50.00
Total Monetary Order	\$1650.00

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: August 4, 2015

Residential Tenancy Branch

