



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution under the *Residential Tenancy Act* (the "*Act*"). The tenants applied for monetary order for the return of double their security deposit pursuant to section 38 of the *Act*, and the recovery of the cost of the filing fee.

Tenant D.B. (the "tenant") attended the teleconference hearing and gave affirmed testimony, was provided the opportunity to present her evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

As the landlords did not attend the hearing, service of the Notice of Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The tenant affirmed that she served the landlords with Notice of the Hearing, Application and documentary evidence via registered mail on June 23, 2015 and provided two registered mail tracking numbers in evidence. The tenant stated that the registered mail packages were addressed to each landlord separately, each with their own package, and that both packages were successfully signed for and delivered to the landlords on June 28, 2015, which was supported by the online registered mail tracking website. Based on the above, I find the landlords were served in accordance with the *Act* as of the date the packages were signed for and delivered, June 28, 2015.

Issues to be Decided

- Did the landlords breach section 38 of the *Act* resulting in double the security deposit being owed to the tenants?
- Are the tenants entitled to a monetary order pursuant to section 67 of the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A two-year fixed term tenancy began on May 1, 2012 and reverted to a month to month tenancy after May 1, 2014. Monthly rent of \$1,350 was due on the first day of each month. The tenants vacated the rental unit as of April 30, 2015. At the start of the tenancy, the tenants paid a security deposit of \$675 on March 26, 2012.

The tenant testified that the landlords did not complete an incoming or outgoing condition inspection report during the tenancy. The tenant testified that on May 20, 2015, the tenants provided their written forwarding address on a piece of paper and served it via registered mail on the landlords. A registered mail tracking number was submitted in evidence. The tenant stated that the landlords successfully signed for and accepted the registered mail package on May 22, 2015, which is supported by the online registered mail tracking website.

The tenant testified that neither she nor the other tenant has ever signed over any portion of the security deposit and that the landlords have not filed towards retaining any portion of the security deposit. The tenant testified that during the first week of June of 2015, the landlords attempted to return to the tenants \$600 of their \$675 security deposit by way of an e-transfer payment, which the tenant stated she declined as the tenants had not agreed to the landlords retaining any portion of the security deposit. The tenant stated that once they had declined the e-transfer payment, the payment was cancelled.

The tenants are seeking the return of double their security deposit. The tenant testified that they are seeking double their security deposit as no incoming or outgoing condition inspection report was completed by the landlords, the landlords have not submitted a claim towards their security deposit, and the full security deposit amount of \$675 was not returned by the landlords to the tenants within 15 days of May 22, 2015, the day the landlords signed for and accepted the tenants' written forwarding address by registered mail.

Analysis

Based on the undisputed documentary evidence and testimony provided by the tenant, and on a balance of probabilities, I find that the landlords have breached of section 38 of the *Act*.

In reaching this finding, I have considered the tenant's undisputed testimony that the tenants did not agree to surrender any portion of their security deposit to the landlords. There was also no evidence to show that the landlords had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain a portion of the security deposit.

By failing to perform incoming or outgoing condition inspection reports, I find the landlords had extinguished their right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the *Act*. A security deposit is held in trust for the tenants by the landlords. At no time do the landlords have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlords may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an Arbitrator, or the written agreement of the tenants. In the matter before me, I find the landlords did not have any authority under the *Act* to keep any portion of the security deposit and did not return the full \$675 security deposit which as accrued \$0.00 in interest since the start of the tenancy to the tenants within 15 days of May 22, 2015, the date the landlords received the tenants' written forwarding address by registered mail, as required by section 38 of the *Act*.

Section 38(6) of the *Act* provides that if landlords do not comply with section 38(1), the landlords must pay the tenants double the amount of the security deposit. The legislation does not provide any flexibility on this issue. Given the above, I order, pursuant to section 38 and 67 of the *Act*, the landlords to pay the tenants double their original \$675 security deposit for a total of **\$1,350**. The landlords should have returned the tenants' full security deposit of \$675 within 15 days of May 22, 2015, having extinguished any right to claims towards the security deposit by failing to complete an incoming or outgoing condition inspection report as required by sections 23 and 35 of the *Act*, respectively.

As the tenants' application had merit, I grant the tenants the recovery of the cost of filing their application in the amount of **\$50**.

Pursuant to section 67 of the *Act*, I find the tenants have established a total monetary claim of **\$1,400**, comprised of \$1,350 for the return of double their security deposit, plus the recovery of cost of the \$50 filing fee. I grant the tenants a monetary order pursuant to section 67 of the *Act* in the amount of **\$1,400** as a result.

Conclusion

The tenants' application is successful.

The landlords have breached section 38 of the *Act* and must pay double the security deposit plus the \$50 filing fee, for a total of \$1,400. The tenants have been granted a monetary order in the amount of \$1,400. The monetary order must be served on the landlords and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 19, 2015

Residential Tenancy Branch

