



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANADIAN NATIONAL RELOCATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

On June 22, 2015 a hearing was conducted in which the tenants filed an application for dispute resolution where they claimed a return of double the security deposit and recovery of the filing fee from the landlord. The tenants attended the hearing, but the landlords did not. The tenants were granted a monetary order. One of the landlords (R.M.) applied for a review of this decision. The arbitrator suspended the monetary order pending a review hearing for the tenants' monetary application as a finding was made that the landlord was unable to attend.

This is a review hearing granted for the tenants' application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for the return of double the security deposit and recovery of the filing fee pursuant to section 67.

The tenant's agent, L.W. (the tenant) attended the hearing by conference call and gave affirmed testimony. The landlord's counsel, O.M. (the landlord) attended and gave undisputed affirmed testimony. Both parties confirmed receipt of the submitted documentary evidence submitted by the other party. I find based upon the undisputed affirmed testimony of both parties that both parties have been deemed served as per section 90 of the Act.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for the return of double the security deposit and recovery of the filing fee?

Background and Evidence

This tenancy began on March 30, 2014 and ended on September 4, 2014. The monthly rent was \$3,350.00 and a security deposit of \$1,675.00 and a pet damage deposit of \$1,675.00 were paid on March 24, 2014.

The tenant provided undisputed affirmed testimony that the tenancy ended on September 4, 2015 and that their forwarding address in writing was provided to the landlord, (C.N.R.) on September 5, 2014 in a letter attachment by email which was acknowledged received by a return email from the landlord (C.N.R.) on September 16, 2015.

The landlord stated that the as the owner/landlord was not aware of his tenant (C.N.R.) subletting the rental property without his permission he was not aware of the dispute between the tenants and C.N.R. until he was served with the order of possession. The landlord stated that he could not dispute the tenant's statements, but that C.N.R. is not an authorized agent of the landlord, but instead is the landlord's tenant as shown by the landlord's submitted copy of the signed tenancy agreement. The landlord (R.M.) stated that he was not a director of C.N.R. The landlord stated that the tenant's application should properly be against C.N.R. and to not include the landlord, (R.M.) as the tenancy agreement and security deposit were made between C.N.R. and the tenants (B.C. and Y.C.)

The tenant did not dispute the claims made by the landlord (R.M.)

Analysis

I accept the undisputed affirmed testimony of both parties and find that the landlord (R.M.) did have a rental agreement with his tenant (C.N.R.) and not the tenants (B.C. and Y.C.). I find based upon the undisputed affirmed testimony of both parties that the tenant (C.N.R.) sublet the rental property without the landlord's (R.M.) permission or knowledge. As such, I order that the landlord (R.M.) be severed from the tenant's application against their landlord (C.N.R.)

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receipt of the tenant's forwarding address in writing.

On the tenant's application, I find upon review of the undisputed evidence provided by the tenant that a claim has been established for return of double the security deposit and recovery of the filing fee. The tenant provided their forwarding address in writing in an attachment to an email to the landlord who was acknowledged receipt of it in an email on September 16, 2014. The landlord (C.N.R.) failed to return the \$1,675.00 security deposit and the \$1,675.00 pet damage deposits to the tenant within the allowed timeframe.

The tenant has established a monetary claim for the original amount of \$3,350.00 for the return of the combined security and pet damage deposits.

I also find that the tenant has established a claim of \$3,350.00 for compensation pursuant to section 38 (6) which provides that the landlords must pay the tenant double the amount of the security deposit and the pet damage deposit for failing to return the original combined deposits within 15 days of receiving the tenant's forwarding address in writing.

The tenant is also entitled to recovery of the \$50.00 filing fee.

Conclusion

I issue a monetary order in the tenant's favour under the following terms which allows the tenant to recover the original security deposit plus a monetary award equivalent to the value of the 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	\$3,350.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the Act	3,350.00
Recover Filing Fee	50.00
Total Monetary Order	\$6,750.00

The tenant is provided with these orders in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with these orders, 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: November 09, 2015

Residential Tenancy Branch

