



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38; and
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62;
- authorization to recover the filing fee for their application from the landlord, pursuant to section 72.

The tenant EG ("tenant") and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant confirmed that he had authority to speak on behalf of "tenant JF," the other tenant named in this application, as an agent at this hearing.

This hearing lasted approximately 44 minutes in order to allow both parties to fully present their submissions. The landlord asked a number of questions repeatedly, requesting legal advice and information about the *Act* and a potential future application by him at the Residential Tenancy Branch ("RTB"). I advised the landlord on each occasion that if he required information about the *Act*, he could contact an information officer at the RTB. I also advised the landlord that I was unable to provide him with legal advice at the hearing and to contact a lawyer in order to obtain such information.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' Application.

The landlord confirmed that he served the tenant with approximately 10 pages of written evidence by way of registered mail on November 3, 2015, to the written forwarding address provided by the tenants. The landlord did not provide a Canada Post receipt but provided a tracking number verbally during the hearing. The tenant stated that he did not receive this written evidence. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's written evidence on November 8, 2015, five days after it

registered mailing. However, I advised both parties during the hearing that the landlord's written evidence was irrelevant to this hearing. The evidence refers to damages suffered by the landlord at the end of this tenancy, but the landlord has not made an application at the RTB for damages and thus, I cannot consider such a claim from the landlord at this hearing.

The tenants initially filed their Application seeking to recover a monetary award of \$725.00. However, in the "details of the dispute" of their Application, they indicated that they wished to seek double the amount of their security deposit. The landlord testified that he was aware that the tenants were seeking double the value of their security deposit at this hearing. Therefore, pursuant to section 64(3)(c) of the *Act*, I amend the tenants' Application to increase their monetary order from \$725.00, the amount of the original security deposit, to \$1450.00, the amount for double the value of the deposit. I find no prejudice to the landlord in amending the tenants' Application, as the landlord had notice of the tenants' claims to be made at this hearing.

Issues to be Decided

Are the tenants entitled to a monetary award equivalent to double 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*?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

Both parties agreed that this tenancy began on September 15, 2014 and ended on May 31, 2015. The tenancy agreement was for a fixed term to end on August 30, 2015. Monthly rent in the amount of \$1,450.00 was payable on the first day of each month. A written tenancy agreement was provided for this hearing.

Both parties agreed that a security deposit of \$725.00 was paid by the tenants. The landlord agreed that the tenants provided a written forwarding address by way of an email to the landlord on June 1, 2015. The tenants provided a copy of this email with their Application. Both parties agreed that move-in and move-out condition inspection reports were completed for this tenancy.

The landlord confirmed that the tenants did not provide written permission to him to retain any amount from their security deposit. The landlord confirmed that no application for dispute resolution was filed by him to retain any amount from the tenants' security deposit. The landlord

stated that he retained the security deposit in order to pay for damages and cleaning when the tenants vacated the rental unit.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenants seek the return of double the value of their security deposit totalling \$1,450.00 from the landlord. The tenancy ended on May 31, 2015. The tenants provided their forwarding address to the landlord by way of email on June 1, 2015. This service method is not permitted by section 88 of the *Act*. However, the landlord confirmed that he received this address from the tenants and he served his written evidence package upon the tenants prior to this hearing by using this forwarding address. Therefore, in accordance with section 71(2)(c) of the *Act*, I find that the landlord was sufficiently served with the tenants' forwarding address for the purposes of the *Act*.

The tenants did not give the landlord written permission to retain any amount from their deposit. The landlord stated that the tenants provided verbal permission for the landlord to retain their deposit if they were unable to find new tenants to take over their tenancy agreement. The tenants denied this fact. Regardless, section 38(4)(a) of the *Act* only allows the landlord to retain the security deposit if the tenants provide written permission, which they did not do by the landlord's own admission. The landlord did not return the deposit to the tenants or make an application for dispute resolution to claim against this deposit, within 15 days of June 1, 2015.

Over the period of this tenancy, no interest is payable on the landlord's retention of the deposit. In accordance with section 38(6)(b) of the *Act*, I find that the tenants are entitled to double the value of their security deposit totalling \$1,450.00.

As the tenants were successful in their Application, I find that they are entitled to recover the \$50.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$1,500.00 against the landlord under the following terms:

Item	Amount
Return of Double Security Deposit as per section 38 of the <i>Act</i> ($\$725.00 \times 2 = \$1,450.00$)	\$1,450.00
Recovery of Filing Fee for Application	50.00
Total Monetary Order	\$1,500.00

The tenants are provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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.

The tenants' Application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, is dismissed without leave to reapply, as this tenancy has ended and the tenants have been awarded double the value of their security deposit as noted above.

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 27, 2015

Residential Tenancy Branch

