



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 their pet damage and security deposits (the deposits) pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 1116 in order to enable the landlord to connect with this teleconference hearing scheduled for 1100. The tenant TS (the tenant) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant confirmed she had full authority to act on behalf of the tenant SS.

Preliminary Issue – Service of Documents

The tenant testified that the tenants served the landlord with the dispute resolution package on 21 July 2015 by registered mail. The tenants provided me with a Canada Post tracking number that showed the same. The tenant testified that the mailing was returned as the landlord did not retrieve the mailing from the post office. The tenant testified that the tenants sent the mailing to the landlord's address for service as set out on the tenancy agreement and, to the best of the tenant's knowledge, this is the landlord's current residence.

Residential Tenancy Policy Guideline, "12. Service Provisions" sets out that service cannot be avoided by failing to retrieve the mailing:

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.

In accordance with sections 89(1) and 90 of the Act, the landlord was deemed served with the dispute resolution package on 26 July 2015, the fifth day after its mailing.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for the return of a portion of their deposits?
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 all the documentary evidence, and the testimony of the tenant, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began 1 May 2014. The parties entered into a written tenancy agreement on 17 April 2014. The landlord continues to hold the tenants' pet damage deposit in the amount of \$550.00 and security deposit in the amount of \$550.00. The tenancy ended on or about 29 June 2015.

No condition inspection report was created at the beginning of tenancy.

On 19 May 2015, the tenants provided their forwarding address in writing to the landlord. This address was provided again on 29 June 2015.

The tenant testified that the landlord has not returned the tenants' deposits. The tenant testified that there are no prior orders of this Branch in respect of this tenancy. The tenant testified that the tenants did not provided authorization in writing for the landlord to retain any portion of the deposits.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit and pet damage deposit or file for dispute resolution for authorization to retain the deposits within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the

deposit. However, pursuant to paragraph 38(4)(a) of the Act, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy.

There is no evidence before me that indicates that the landlord was entitled to retain any amount from the deposits. The tenant has provided sworn and uncontested testimony that the tenancy ended 29 June 2015 and that the tenants provided their forwarding address to the landlord on both 19 May 2015 and 29 June 2015. In accordance with subsection 38(1) of the Act, the landlord had until 14 June 2015 to return the tenants' deposits.

Residential Tenancy Policy Guideline, "17. Security Deposit and Set off" sets out that: 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.

At the hearing I asked the tenant if the tenants were waiving their right to doubling of the deposit. The tenant informed me that the tenants were not. As the landlord has not filed a claim within fifteen days of receiving the tenants' forwarding address and as the landlord has not returned the tenants' deposits, I find that the tenants are entitled to a monetary order equivalent to the amount of their deposits as well as return of their deposits.

As the tenants were successful in this application, I find that the tenants is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$2,250.00 under the following terms:

Item	Amount
Security Deposit Return	\$550.00
Pet Damage Deposit Return	550.00
Subsection 38(6) Compensation	1,100.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$2,250.00

The tenants are provided with a monetary order in the above terms and the landlord(s) must be served with 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 subsection 9.1(1) of the Act.

Dated: December 10, 2015

Residential Tenancy Branch

