



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OLC, FF

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

All named parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenants served the landlord with the dispute resolution package on 2 July 2015 by registered mail. The tenants sent the letter both to the address at which they believed the landlord resided and to the landlord's address for service set out in the tenancy agreement. The address for service provided in the tenancy agreement is the landlord's parents' address. The landlord's parents are listed as the landlord's agents in the tenancy agreement. The landlord received the dispute resolution package, but did not receive it until approximately six weeks ago.

Paragraph 89(1)(c) of the Act permits service by registered mail to the address at which the landlord carries on business as a landlord. I find that by listing the address of her agents on the tenancy agreement, that address became an address at which the landlord carried on business as a landlord.

On the basis of this evidence, I am satisfied that the landlord was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act..

Preliminary Issue - Scope of Application

The tenants have set out that they seek an order that the landlord to comply with the Act, regulation or tenancy agreement. I asked the tenants to explain if there were any other orders that they sought that were not monetary. The tenants did not seek any other type of order and indicated that they made this claim out of an abundance of caution. The tenants agreed to withdraw this portion of their claim.

The tenants set out in their claim that they seek a total monetary order in the amount of \$1,260.00. This represents an amount equivalent to the return of double the tenants' security deposit. At the hearing, the tenant BJ indicated that the tenants also sought compensation for expenses incurred in the course of making this application, including the cost of registered mailings, travel costs, and printing costs. These amounts are in the nature of disbursements that would normally be awarded as part of a "costs award"

Section 72 of the Act allows for repayment of fees for starting dispute resolution proceedings and charged by the Residential Tenancy Branch. While provisions regarding costs are provided for in court proceedings, they are specifically not included in the Act. I conclude that this exclusion is intentional.

I find that the tenants is not entitled to make any claim for compensation for the tenants' costs in filing this application and decline to amend the tenants' application to include a request for these amounts.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for the return of their security deposit? Are the tenants entitled to a monetary award equivalent to the amount 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 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 parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

This tenancy began on or about 1 June 2014. The tenancy ended 1 June 2015. Monthly rent was \$1,275.00. The tenants provided a security deposit in the amount of \$630.00 at the beginning of the tenancy.

There were no condition inspection reports created for this tenancy.

The tenant BJ testified that on 2 June 2015 she sent the tenants' forwarding address in writing the landlord by both regular mail and by email. The landlord did not recall receiving the letter, but admits that she did receive the tenants' forwarding address by email.

The tenants did not authorize in writing the deduction of any amount from their security deposit. There are no prior orders of this Branch in respect of this tenancy.

On 2 June 2015, the landlord attempted to return \$500.00 of the tenants' security deposit by electronic transfer. The tenants did not accept return of the partial payment and demanded full repayment of their security deposit.

The landlord submits that she withheld amounts from the deposit to remediate damage caused by the tenants. The landlord has not yet filed any application in respect of this claim.

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 tenants' security deposit. The tenancy ended 1 June 2015 and the tenants provided their forwarding address to the landlord on 2 June 2015. In accordance with subsection 38(1) of the Act, the landlord had until 17 June 2015 to return the tenants' security deposit in full. The landlord did not return the tenants' security deposit in full within fifteen days of 2 June 2015.

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 CD 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 are 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 \$1,310.00 under the following terms:

Item	Amount
Return of Security Deposit	\$630.00
Subsection 38(6) Compensation	630.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,310.00

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

